QUESTIONS AND ANSWERS

ON

JURISPRUDENCE

WITH

UNIVERSITY QUESTIONS AND ANSWERS AS WELL AS TABLES OF DIVISION ON IMPORTANT SUBJECTS

FOR

LAW STUDENTS

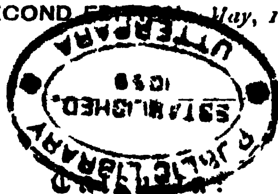


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PREFACE.

This treatise has been compiled for helping the Law students in passing through the University Examinations. All necessary and important matters have been prominently brought to their notice in the shape of questions; and answers have also been added with the view of instructing them as to how particular questions require to be answered. Care has been taken to make this book contain all matters necessary for a text-book on Jurisprudence; and they have been arranged in a way, which will, I am sure, be highly useful for reference and recollection. Besides, it will be seen that if the questions be taken out, the answers themselves will form a continuous series of matters like an ordinary book. Important and instructive University Questions have been introduced in the book, when it has become possible to do it without disturbing the due order and continuity of the subjects.

University questions and answers have been added in Appendix A; and tables of division with regard to important subjects have been added in Appendix B. In short, no pains have been spared for rendering the book in every way useful to the Law students; and it is hoped that it will prove to be a useful compilation.

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CONTENTS

JURISPRUDENCE

CHAPTER I.

JURISPRUDENCE.

Q 1 *Define Jurisprudence, with what other sciences is it closely connected?* (B L 1870)

Answer Jurisprudence is the "*formal science of positive law*" It is closely connected with Ethics, Legislation **and** Politics

2 *Trace the meaning of the word "Jurisprudence" from the earliest time Shew how it has been accepted by all the nations of Europe*

A Originally the Roman term "Jurisprudentia" signified merely a "Knowledge of Law", but its present and modern acceptation is a "Science of Positive Law" With the progress of society, the subject of Law gradually rose into importance, and came to be highly thought of hence Cicero, who originally described a Jurisconsult as a "person skilled in the *laws* and in the *usages* current among private citizens and in giving opinions and bringing actions and guiding his clients aright," describes Civil Law latterly as an *art* like Astronomy, Geometry and dialectic &c, dealing with the pursuit of *truth*, and Ulpian considered Jurisprudence as "the knowledge of things human and divine, the science of the just and unjust" Thus the same term which originally, signified a mere "Knowledge of Law" came latterly to imply a *branch of philosophy* and ultimately "Science of Positive Law."

The Greeks at first borrowed the term "Jurisprudens" from the Romans as they could not find an appropriate vernacular

term for it in their own language ; and probably they did not like to use any vernacular term for it. Subsequently, the other nations of Europe have also accepted it in their own languages owing probably to the fact that they are by habit not inclined to call a branch of knowledge by a vernacular name.

3. *To whom is the world indebted for the origin and designation of the "Science of Law"?*

A. To the Romans, and specially to Pomponius, who called it *Jurisprudens.*

4. *What is the need of a "Science of Law"?*

A. As law has to deal with and provide for *human relations* and *events*, it gradually increases in bulk, and becomes the more and more complex with the progress of society ; and thus in course of time, it becomes a huge mass of complex matter, quite impossible to be digested and mastered by any person. Hence, it becomes necessary to search for and understand the general principles, which underlie the various legal rules, and systems of law ; and thus a "Science of Law" becomes necessary and comes into existence.

5. *Mention some of the improper uses of the term "Jurisprudence," and give the meanings in which they are used.*

A. The term "Jurisprudence" may be said to be improperly used in the following expressions :—*viz.*—(1) Jurisprudentia" in Rome denotes sometimes a current view of the law. (2) *Jurisprudens constante*:—in which the term "Jurisprudence" signifies the view, which the courts take of certain questions , (3) *Equity Jurisprudence* :—where it signifies law, the whole expression implying a *book* upon law as administered in the Courts of Equity ; (3) *Jurisprudence* of France or England implies the *law which is in force* in such country. of (5) *Medical Jurisprudence i.e.* a book treating

of important medical matters in *legal* proceedings. It is better expressed as Forensic Medicine, or Medicine Legal. (5) *Architectural Jurisprudence.*

6. *What is the appropriate subject of Jurisprudence, and what is its province? (B L. 1887)*

A. The appropriate subject of Jurisprudence is *positive law, i. e*—law established in an independent political community by the express or tacit authority of its sovereign. The province of Jurisprudence is "to set forth and explain the comparatively few and simple ideas which underlie the infinite variety of legal rules as existing in the different systems of law."

7. *What are three great epochs in the history of ancient Jurisprudence? The fundamental assumption with which the history of political ideas begins is historically false. Explain. (B. L. 1896.)*

A. The *three* great epochs in the history of ancient *Jurisprudence* are—(1) The age of Themis and Themistes. (2) The age of Customary Law and (3) The age of Codes.

The history of political ideas begins with the assumption that kinship in blood is the only ground of community in political functions. If so it follows that the memberships in early commonwealths were based on common lineage. What was believed to be true of the *family* was believed to be true of the *house*, *tribe* and of the *state*; but it is found that each community has preserved records shewing the assumption to be false.

8. *What sort of a Science is "Jurisprudence"? Illustrate it by examples.*

A. (1) It is a *formal* or *analytical* Science, as opposed to a *material* one; for, it deals with *human relations* and *incidents*, and not with the *legal rules*, which control them.

Suppose a man masters all the laws as current in some countries, and finds that there is a common element in them all ; that they all assume several moral phenomena and were made for silimar objects ; then he may draw out a scheme of the objects, modes, and ideas common to them all, which would be a *Science of Law.*

(2) It is a Science of *Positive* (actually enforced) *Law* ; and it is a *posteriori* derived from such human relations as have got legal status in the various Systems of Law.

(3) It is a *progressive* Science ; for, it must keep pace with the progress of human relations and incidents.

9. *(a) What do you understand by "Particular Jurisprudence" and "General Jurisprudence" as defined by Austin? (b) What are Holland's reasons against the division of Jurisprudence into "particular" and "general"?*

A. (*a*) Austin says, "Particular Jurisprudence" is the Science of any actual system of Law or of any portion of it. The only *practical* Jurisprudence is *particular.* The proper subject of General or Universal Jurisprudence is a description of such subjects and ends of laws as are common to all systems, and of those resemblances between different systems, which are bottomed in the common nature of man, or correspond to the resembling points in these several portions.

(*b*) "*Particular Jurisprudence*"—may mean (1) the *Science*, which is derived from an observation of the laws of one particular country, or (2) the knowledge of the laws of a particular nation.

As to the *first* meaning, it may be said that it is not impossible to construct a Science of Law from the laws of a particular country, (the Science of Geology was mainly constructed from an examination of the strata of England), though it is true that when the field of examination is wider

the chance of the generalizations being correctly enunciated becomes also the greater. But in such a case, the particularity will attach not to the science itself, but to the country whence the materials are taken. A Science to be worthy of its name must be the same in every country; and the principles and truths, which it inclucates must hold good everywhere. As to the *second* meaning, it is to be remarked that it is utterly improper to describe merely practical and experimental (empirical) knowledge by a term, which befits the name of a Science. For these reasons, the above expression seems to be quite a mis-nomer, and therefore not at all necessary and desirable; and consequently the opposite expression "General Jurisprudence" becomes also unnecessary

10. *Is Jurisprudence capable of any such division as "historical" and "philosophical"? Support your views by reasons.*

A It is true that **Jurisprudence** is in some respects allied to Ethics and Philosophy, and in some others to History It may be said that History, or Philosophy, or Geography supplies many facts for Jurisprudence. But the Jurist is to consider those facts with a view to find out the wants for the supply of which laws have been invented; and then to digest them properly without any regard to their historical, or philosophical, or geographical distribution. Some treatise on "**Jurisprudence**" may contain more historical facts or metaphysical reasons than another; but such differences are due to different persons having written on the same subject; and they do not afford any ground for a division of the Science itself

11. *Is there any objection to the division of "Jurisprudence" into "civil" and "criminal," or "private" and "public"?*

A. There can be no objection to the division of a Science into its several departments. Hence, the above expressions seem to be quite proper and unobjectionable.

12. *Sum up the above conclusions :—*

A. The word "**Jurisprudence**" is wrongly applied to *actual systems* of Law, or to *current views* of Law, or to *suggestions* for its amendment ; but it is the name of a Science. This *Science* is a *formal*, or *analytical*, rather than a *material* one. It is the science of *actual*, or *positive* law. It is wrongly divided into "general," and "particular"; or into "philosophical," and "historical." It may therefore be defined *provisionally* as the **formal Science** of **Positive Law.**"

13. *Determine the place of Jurisprudence in a system of classification of the Sciences.* (B. L. 1882.)

A. See Table I. App. B.

14 *What are the defects of Bentham's division of jurisprudence ?* (B. L. 1896.)

A. See Table II. App. B., from which it will appear that "*Unauthoritative Universal Jurisprudence*" is alone entitled to bear the name of the Science ; but it is desirable that a Science should bear a simple name, and not such a big name with so many epithets. Besides, there is no reason for distinguishing it from the other departments of the subject, which do not exist.

15. *Describe and illustrate the method which have been employed in carrying on investigations in the science of Jurisprudence.* (B. L. 1882).

A The method employed by Austin is *first* to determine the *province* of *Jurisprudence* by describing the boundary which severs it from the regions lying on its confines, and then to analyse the leading notions which pervade every system of

positive law; *e. g. persons,* upon whom or for whose benefit laws are made; *things, acts, forbearances* which are subjects of law. *Wish,* or *desire* in the sense of *motive, will, intention, negligence,* &c., *i. e.* motives belonging to the *modus operandi* by which laws stimulate or prevent human action. Lastly, he analyses the complex though familiar motives of *right* and *injury*

Professor Holland first determines that *Jurisprudence* is the *formal* Science of *Law.* Then he goes on to divide *Law* into (1) the *order* of the *Universe* and (2) a *rule* of *human Action*; and he sub-divides the latter again into (*a*) Law *proper* or *positive*, and (*b*) *other rules* of *human action.* He goes on next to discuss what are the *sources* to which Law owes existence and what is its *object.* Law is then considered as conferring *rights* and creating *duties*; and hence they are analysed and classified, Law is divided into (1) Private Law, (2) Public Law and (3) International Law; and each of these classes is dealt with separately, in the various phases of "*rights*" and "*duties*" with a chapter at the end being added on the subject of "Application of Law."

CHAPTER II.

LAW.

16. *How does Bentham define "Law," or "the Law"? Shew how his definition cannot be said to be correct when applied to the Roman, German and French systems of Law?*

A. Bentham defines "Law," or "the Law" as implying the "sum total of a number of individual laws taken together." But this definition is ambiguous, when applied to the Roman, German and French Systems of Law; for, the

Roman "*Jus*," the German "*Recht*," and the French "*Droit*," which are equivalent to the English term "law," cannot in fact be said to express nothing more than "the sum total of a number of individual laws taken together." These terms imply (1) the *sum total of laws*; (2) the *sum total* of rights (Jura, Rechte, Droits); (3) the *sum total* of all that is *Just* (Justum, recht, droit): and hence, when *Jurisprudence* is said to be the Science of *Jus*, *Recht* or *Droit*, it would mean that it is the Science of (1) Law, or (2) Rights, or (3) Justice; and thus the definition of *Jurisprudence* as given before would be quite ambiguous, as *three different things*, and *not one particular* and *definite* thing, would be implied by it.

17. *State how the definition of Jurisprudence as "the Science of Law" is acceptable in English Law?*

A. The term "Law" in its abstract sense is in the English language free from any suggestion of the aggregate of *rights* or of the aggregate of *just* things as is implied by the terms "*Jus*," "*Recht*," and "*droit*"; and hence, the above definition is not liable to such ambiguities in England as shown above; and it may therefore be accepted as useful and satisfactory.

18. *What are the objections against the definition of Jurisprudence as the Science of Law and how may they be met?*

A. Though the abstract term "Law" does not imply the aggregate of *rights* or the aggregate of *just* things, it suggests all the meanings in which the concrete term "a law" is used in the English language; and as these are numerous, the conception of Law becomes vague and obscure. In order to meet this difficulty the Jurist is required to select that *particular meaning*, which he admits into his Science. Besides, it will appear that heterogeneous as the different senses

of the term "a law" may at first appear, it is not hard to trace connection between them, and the earliest sense of it is not widely different from the latest and most accurate one.

19. *Trace the use of the term "a law" from the earliest time. Shew how the later uses of it have arisen ?*

A. The shepherd who guides his flock, and the head of a family who controlls its affairs, seem to have been the earliest law-givers. Their directions were the earliest *laws* as orders given by those who had power to enforce their obedience. The *original* and the *popular conception* of *law* is "a command," which prescribes a course of action and punishes breach of it. This conception necessarily implies that of a law-giver who has power to enforce his commands, and out of this original use has arisen many other uses some of which are proper or metaphorical.

19*a*. *The strongest intellectual tendency of mankind is the anthropomorphic. Develop this idea and show how the derivative uses of "a law" have arisen.*

A. Man is a mystery to himself; but external nature is a greater mystery to him He tries to explain, however, the latter by the light within him. As he governs his family and flock, he supposes that unseen beings govern the waters and the winds; and as he observes greater regularity in nature, he thinks the numbers of such beings at work are fewer till he arrives at the idea of one great God, or Nature &c Besides, men have almost always held some rules as binding on them on the ground that they have been revealed to them by some super-human power or gathered by them from a close observation of the Nature as indications of the will of that power. Hence such expressions as Laws of God, Laws of Nature, Laws of Morality, Laws of Beauty, &c. have arisen.

The world with all its varied phenomena was originally

studied as a whole; and the facts of nature and the doings of men were equally conceived of as ordalned by the Gods. The separation of the Sciences to which we are now accustomed was also unknown before. These facts go to explain why the same name was given to things so different as are implied by the terms *Laws of God*, *Laws of Nature* &c. mentioned above?

19*b*. *Shew how the idea of a law changed in later times?*

A. In course of time, the great problem *viz.*, study of the world as a whole, was gradually broken up into a number of minor problems; and hence, there occurred a division of the Sciences. A line was then drawn between those Sciences which deal with the external nature and are called "*theoretical*" or "*physical*" Sciences and those which deal with the actions of men and are called "*practical*" or Metaphysical Sciences. The term "*Law*" thus came to be used in the sense of (1) "*order*" of the universe in the case of the *former* class, and in the sense of (2) "*a rule of human action*" in the *latter* class of Sciences. As the term "Law" is most used in the *latter* class of Sciences, and is most needed in them, it is reasoncable to say that the sense in which it is used in them is its *proper* meaning; and its use in the *former* class of Sciences is *improper*, or merely metaphorical. *Jurisprudence* deals with *law* in the sense not of *order* but of a *rule of conduct;* but all such rules are not strictly speaking *laws* as will appear later on.

20. *Shew how do the rules of human conduct differ from each other and what are the common characteristics in them? How would you define "Law" as a rule of human action?*

A. It is well known that some of these rules are obeyed by all nations and in all countries, while others are observed in some countries, or by some nations. Again some of them

relate to the fundamental institutions of society, while others to its pettiest details. Some of them are enforced by the highest sovereign power, while others may be violated easily by any person. For these reasons it is said that these rules differ widely; but though they do so, there are also many common elements in them and the same may be described as follow:—

(1) They all are, or may be, expressed as *distinct propositions* and addressed to the will of rational beings.

(2) Of the *two* kinds of propositions, which may be so addressed, they are *commands* *i. e.*, precepts in the sense that obedience to them depends on the will of those who command, and not in the sense of counsels.

(3) They are accompanied by *sanction* *i. e.*, they imply, if they do not express that their author will see to their being obeyed.

(4) They are *general commands* as opposed to special commands which enjoin on'y particular actions.

20*a*. *Criticise the expressions "laws of honour" or "laws of etiquette."*

A. In these expressions, the word law is used by way of analogy merely to indicate a *rule of action* or a *precept*, and not in its strict sense.

20*b*. *With what rules of human action are laws proper most canfused?*

A. With those rules of human action which are called Laws of God, Laws of Nature, and Laws of Morality.

20*c*. *How does Sir Walter Raleigh divide laws?*

(1) External or uncreated; (2) natural or internal; (3) imposed or of addition. The last one is again divided into *divine* and *human*.

CHAPER III.

LAWS AS RULES OF HUMAN ACTION.

21. *What are the common characteristics of the moral or practical sciences.*

A. They deal with the phenomena of human action, including all volitions whether accompanied by external movement or not. They postulate a will free to be influenced by motives presented to it and also the determination of the *same* having regard to rules of life and conduct. They have many common ideas, *e. g.*, " freedom, act, obligation, sanction and command.

22. *How does Holland divide the Practical Sciences?*

A. See Table 1. App. B. He divides these into (1) Sciences dealing with states of the *will*, irrespactive of External "manifestation in act" which he calls *Ethics*; (2) Sciences dealing with the same as manifested in action, which he calls *Nomology*. The former deals not only with the sort of acts which men do, but also with the sort of men who do them." The latter on the other hand deals entirely with the conformity or non-conformity of outward acts to rules of conduct." "Ethics is the science of conformity of human character to a type Nomology, of the conformity of actions to rules." The former deals with the "duties which are binding on the conscience" while the latter, with the "rights which are the elements of social life."

23. *How does Kant define Ethics? Discuss it. How may Nomology be similarly defined?*

A. Kant describes *Ethics* as dealing with the " laws for which external legislation is impossible " Ethics is the science which deals with the rules which when known are adopted by

the *will* as its objects or aims. Legislation cannot control the *will* itself but only its external expression in act ; and hence, the above definition is correct. Nomology may be similarly defined as "the science of the totality of the laws for which an external legislation is possible."

24. *How does Prof. Holland divide Nomology ?*

A. See Table I. App. B. He divides Nomology as the science of External action into (1) science of rules enforced by indeterminate authority including Moral Laws and Laws of Nature ; (2) Science of rules, enforced by determinate authority including Divine Laws and Positive Law.

MORAL LAW.

25. *What are* "**Moral Laws ?**" *What is their common characteristic ? What do they include ? and how are they diidved ?*

A. "*Moral Laws*" are rules of external human action enforced by indeterminate authority. Their *common characteristic* is that they rest upon pubiic opinion, and though no definite authority can be appealed to in case of their breach, yet those who obey them are regarded with favour and those who disobey them with disfavour by society in general or by a section of it. They include "usage in the pronounciation of words, in the choice of dress, of social demeanour, of etiquette, or of honor between gentlemen, as well as the gravest principles of morality, specially so called." Their common feature is that they are received in certain circles of society and their breach exposes the delinquent to "ridicule, hatred or coercion. The weakest forms of these rules are *rules* of Fashion, deviation from which is called vulgarity or eccentricity, and which exposes the transgressor to penalties varying from a smile to expulsion from society. The *rules* of *Honor*

are somewhat stronger, breach of which is called "conduct unbecoming a gentleman." The most important *moral rules* are principles of morality called *Positive Morality*, the breach of which is called *vice.*

26. *How do you distinguish the rules of Fashion and of Honor, from the rules of Positive Morality so far as the origin and authority are concerned? And how are they distinguished from Positive law?*

A. The rules of Fashion and of Honor are said to be more or less conventional; and they have grown up in societies in which they were found to be beneficial. The rules of Positive Morality seem to have grown up from (1) religion, (2) speculative theories, and (3) necessities of existence; and they are distinguished from Positive Law on the ground that they do not depend upon a direct interposition of political authority and their *sanction* is based upon public sentiment.

27. *To what are due the differences of moral principles in different countries?*

A. They differ on account of difference in climate, situation, local circumstances of the country and the necessities and exigencies of the people.

LAW OF NATURE.

28. *Describe what do you know of the Law of Nature. What are the different senses in which the expression has been used, and what deductions may be made from the same?*

A. *Law of Nature* is the most important portion of "*Moral Laws,*" regulating such external acts of men as are thought fit for political enforcement. They rest upon public opinion and are enforced by it It has been used in *three* different senses, *viz.*, (1) in comparision with Positive Law,

which is said to be *variable* and *arbitrary*, it is said to be such law, which is "immutable and in accordance with nature." (2) The law "which prevails both among men and animals and controlls the union of sexes and nurture of offspring." By virtue of this sense of *law*, all men are said to be equal as before the growth of society they were governed by it; it is the *Jus naturale* of Ulpian. This sense, however, is not consistent with the idea of *law*, as it is addressed to a blind *instinct*, and not to a rational *will* (only when it may be called *law*). Besides, to think of legal rights before the origin of society is not correct; for, *law* is a human institution, and arose with the progress of society: and hence, this view of *law* has not been accepted by the people. (3) A body of rules which are uniform among all nations, *i.e.*, in the sense in which the expression *Jus gentium* was used among the Romans.

The *deductions* which may be made from the doctrine of *Jus naturale* are:—(1) some acts though not forbidden by the Law of Nature may be forbidden by the Positive Law, *e.g.*, the act of growing tobacco in England. Such acts are called *mala prohibita* and not *mala in se*. (2) Positive Laws are said to be invalid when they conflict with the Law of Nature. (3) Natural law has been often called in to justify a departure from the strict rules of positive law. (4) Law of nature is considered to be superior to Positive Law, as it is supposed to arise from Nature; and hence, arise the body of rules called Equity to fill up gaps and deficiencies of Positive Law. Such are the cases decided in India according to the principles of "Justice, Equity and good conscience." (5) The exceptional rules of "Law Merchant" have been explained as derived from Natural Law. (6) When a foreign Judgment is refused recognition in English Court as opposed to Natural Justice the objection is limited to the procedure by which the Judgment

was obtained. (7) The Science of International Law is based entirely upon the Law of Nature.

DIVINE LAW.

29. *Relate what are Divine Laws.*

A. *Divine Laws* are the rules of human action, set down by or supposed to be set down by a *determinate* authority *viz*, by a God or Gods. They refer to the direct revelations of the will of a superhuman power, and also to the indirect intimations of that will as known by the term *Conscience* of a man. The breach of such law is called a *sin* which, it is believed, is sooner or later to be redressed by temporal reward or punishment as amongst the Jews, or in a state of future existence as amongst the Christians. Austin uses the expression " Laws of God" for Divine Laws.

30. *How are Laws proper distinguished from other Laws and how are the latter called Laws* ?

A. All other rules for the guidance of human action except *Laws proper* are called Laws merely by *analogy* ; and all rules, which are not really rules for human action are called *Laws* by *metaphor* only.

31. *Trace that meaning of Law which is the proper subject of the jurist* ?

A. Laws of God are first distinguished from human Laws. The latter is divided into (1) Laws set down by any human authority and (2) laws set down by a sovereign political authority. Law implies in the practical sciences (1) a rule of human action (2) a general rule of human action taking cognizance of external acts enforced by a determinate human authority which is paramount in a political society. In short, "Law" is a general rule of human action enforced by a political sovereign authority.

CHAPTER IV.

POSITIVE LAW.

32. *What do you understand by the expression Positive Law? (B. L. 1874.)*

A. *Positive Law*:—implies the "law established" or "*positum*" in an independent political community by the express or tacit authority of its sovereign or supreme government" In other words, it is the *actual* or *proper* law of a country, so called on the ground that it is "imposed by a definite authority (sovereign) upon definite persons (subjects)."

32 *a What is Law in the proper sense of the word? In what other senses it is used? (B. L. 1870).*

A "*Law*" in the proper sense of the word is Positive Law—as defined above. Professor Holland discribes it as "a general rule of external human action enforced by a sovereign political authority"; or "a general rule of human action, taking congnizance only of external acts, enforced by a determinate authority, which authority is human, and among human authority is that which is paramount in a political society"

"Law" has been therefore used in the sense of (1) "command," (2) order of the universe, (3 rule of human action, and (4) rule of human action enforced by the sovereign in a society, which is *positive law* or *law proper.*

32 *b. Give a summary of the conception of the term Law? (B. L. 1889).*

A. See Q. 19, 19 *a* and 32*a*.

32 *c. What are the Essentials of a law? Classify the various kinds of laws. (B. L. 1872.)*

A. See Q. 20, 31 and 32 *a*.

33. *By whom was law proper first called Positive Law.*

How is "law" as a rule of action distinguished from other rules of action?

A. Law Proper was first called Positive Law by Austin. It is distinguished from other rules of action by the fact that it is imposed and enforced by a definite authority, who is the sovereign in a political society.

34. *Analyse the definition of Law as given before and relate what are the important words in it.*

A. The definition of *law* as given before implies that (1) it exists in a *political society* only; and that it does not exist where there is no such society; (2) it is enforced or in other words breach of it is punished by the paramount head of that society; (3) it is a rule relating to the external action of men independent of their will; and (4) it is a general rule. The important words in it are—(1) general, (2) rule of action, (3) external, (4) enforced (5) sovereign, (6) political authority.

35 *Explain each of the above words as used in the definition of law.*

A. The word *general* as used in the definition of *law* is opposed to *particular*; what applies to a particular or special case is not law, but what applies to the *general* body is a subject of *law*. *Rule of action* implies not *order*, but a fixed rule for doing a thing. *External*—implies irrespective of any internal *will*, *Enforced*—implies that breach is punished. *Sovereign* - implies *paramount head*. *Political authority*—implies power in a *political society*.

36. *What is your conception of a Political Society?* (B. L. 1873.)

A. A "*Political Society*," or "a *State*" is an "association of men in which one member or a certain definite body of members possesses the absolute power of issuing commands to the rest, to which commands the rest are generally obedient."

36. **A,** *What are the two essential parts of a State?*

A. A State consists of *two* essential parts—*viz*, the *Sovereign*, and the *Subject*.

37. *Define a "State." What are the two aspects of the sovereign part of a State?* (B. L. 1898.)

A A State is "a numerous assemblage of human beings generally occupying a certain territory amongst whom the will of the majority or of an ascertainable class of persons is by the strength of such majority or class made to prevail against any of their member who opposes it" The sovereign part of a State has *two* aspects, *viz.*—(1) *external i.e.*, independent of all control from without; and (2) *internal*, *i.e.* paramount over all actions within.

38. *Define a "People" and compare it with a "State."*

A. A "People" implies a large number of human beings united together by a common language, and by similar customs and opinions resulting usually from common ancestry, religion and historical circumstances. A *State* is either co-extensive with a *People* as in France; or embraces several "*Peoples*" (*e g.* Austria). One "*People*" may enter into the composition of several States as do the Poles and the Jews. A *People* is a *natural* unit, while a *State* is an *artificial* one. There were *Peoples* before there were *States.*

39. *What is a "simple State" and a "System of States?" Illustrate them by examples.*

A. A "simple State":—is a State, which is not "bound in a permanent manner to any foreign political body, and is qualified to be a member of the family of nations." States, which are not *simple*, are said to be members of a "system of States"; and in such cases, they stand upon *equal* terms when they are called an "incorporate union" (*e. g.*, the German State and the United States), or upon *unequal* terms when

the States occupying inferior position are called "*protected*" (*e.g.* the Republics of Anderve and San Marino) or "*under suzerainty.*"

40. *Distinguish a Democracy from a Monarchy.*

A. When the supreme power of a State is vested in all the members of it, it is called a "*Democracy*," and when the same is vested in only one or more persons, it is called a "*Monarchy*," or an "*Aristocracy.*"

41. *What do you know of the origin of States and Law?*

A. Originally, the States and Law were said to have *divine* origin. The earlier Greek poets and philosophers ascribed divine origin to the States and also to Legislation. "Every law," said Demosthenes, "is a gift of God and a decision of sages." Later speculators have explained the rise of States, or Political Societies by the hypothesis of an *original contract.*

42. *What is meant by the original contract of Society?* (B. L. 1878.)

A. The "original contract of society":—implies a contract between the sovereign and subject—*viz.* (of *protection* on the part of the sovereign, and of *obedience* on the part of subject) upon which the society is supposed to be based.

43. *Criticize Savigny's statements* (1)—*that a People never exists as such without its bodily form the State; and* (2) *a State is the highest stage in the procreation of law.*

A. Although there is hardly any trace in history of the transformation of a "People" into a "State," it is improper to affirm as Savigny has done that a *People* never exists without a *State.* It is also not proper to say that a "State is the highest stage in the procreation of law" for, morality may precede, but law must follow the organization of a political society.

44. *What do you understand by "supreme power"?* (B. L. 1870.)

A. The aggregate of powers, possessed by the ruler of a political society is called *supreme power.* It may also be defined as the final and highest power which is possessed by the Sovereign in a Political State It is infinite in number and kind; and it is partly brought into exercise, and partly lies dormant.

45. *Distinguish between the terms "Sovereign" and "Sovereign body" as applied to political society, Is the Queen of England a sovereign in the strict sense of the word? State the functions of a sovereign body with regard to law.* (B. L. 1875)

A. When the ruler of a State consists of a single person, he is called the Sovereign; but when the ruling power consists of a number of persons, it is called the Sovereign body. The Queen of England is called a Sovereign out of courtesy; and she is no Sovereign in the strict sense of the word. The functions of the Sovereign body with regard to law is to make and enforce it.

46. (*a*) *Explain the position that Sovereign power is incapable of legal limitation, (b) Is a pledge given by a Sovereign ruler to enhance the amount of revenue payable by a class of his subjects binding on his successors?* (B. L. 1894.)

A. (*a*) The Sovereign authority is said to be supreme, and absolute from a purely legal point of view. Indeed, as law is supposed to proceed from the Sovereign body alone, it is not proper to say that the latter is limited, or that its acts are illegal. But as a matter of fact, the Sovereign rules a country for the sake of the people living in it, and he cannot therefore totally neglect the duties which he has assumed. *(b)* Yes, it is binding on his successors.

47. *(a) What according to writers on International Law is*

a "half-sovereign State?" (b) May Cooch Behar and Baroda be styled "half-sovereign States?" (c) What observations does Austin make on the epithet "half-sovereign?" (B. L. 1894,)

A. A "half-sovereign State" is a State which has political and sovereign power within its own territory, but which is subject to another State exercising political power over it. *(b)* Yes. *(c)* Properly speaking a State, which is politically subject to another State cannot be said to be supreme; and Austin says, it is therefore not proper to speak of a State as half or imperfectly sovereign.

48. *How does Sir Henry Maine attack the theory that all laws are rules enforced by a sovereign power? How he may be met on this point?*

A He doubts the correctness of the above theory and points out real difficulties in its application to the facts of history. He asks whether the "Village Customs of Punjab were enforced by Runjit Sing or the laws of the Jews during their vassalage to Persia by the great King at Susa" But the following answer may be given to this question. There is no doubt about the correctness of the above theory when applied to the Western States; and as regards the oriental tax-gathering Empires, some distinctions may be made in the relations of sovereignty with the village customs of the subjects. Infractions of a village custom or local law may be enforced or tolerated. If it be habitually enforced by local authority, then it follows that it must be supported by the sovereign power; and if it is allowed to pass by without infliction of any penalty, it follows that there is no law strictly speaking which might be said to have been disobeved. It is convenient to hold that those rules only which are enforced by the sovereign are law; but there are states of societies in which it is difficult to find such laws.

49. *Show how sovereignty is not capable of limitation by law.* (B. L. 1880.) *How far is it true to say that the sovereign authority is supreme and absolute? What are the views of the Chief Jurists on this point?*

A. Bentham, Austin and Blackstone agree on the point that the Sovereign authority is *supreme*, and is also *absolute* from a legal point of view. Bentham thinks that the distinction between a free State and a despotic State so called, is really due to the manner in which the whole mass of power, which taken together is supreme, is distributed amongst the several ranks of persons who are sharers in it; and that they do not mean that the power vested in one State is less or more than that in another. As a matter of fact, however, it is not correct to say that the supreme power is absolute; for, even Bentham admits that *Sovereignty* is limited by the express convention of protection and obedience. Though the Sovereign of a State be not restrained by law, he avows his intention to govern the people for the benefit of the members of the society generally; and he cannot altogether neglect this duty. Public opinion, free press &c work as preventives against the exercise of absolute power by the Sovereign.

50 *State the view of Sovereignty which is held by analytical Jurists. What are the objections that have been raised against it on historical grounds.* (B. L. 1897)

A. The idea of Sovereignty has *double* character, as shewn before, *viz.*, (1) paramount over all matters within, and (2) independent of all outside. Objections have, however, been raised against the doctrine that there can be no law without a State, especially by S. H. Maine. See question No. 40.

51. *What is meant by delegation of Sovereignty? Give some examples of it that occur to you.* (B. L. 1874).

A. When the Sovereign "substitutes for his own *will* the *will* of another person or body of persons," it is said to *delegate sovereignty*. To confer the power of making laws, or declaring war, of making treaties, of granting a pardon, are examples of different kinds of *delegation* of *Soverignty*.

52. *Distinguish between the functions of the Lawyer and the Legislator.* (B. L. 1873).

A The *Lawyer* has to deal with the *actual* or *positive* law, while the function of the *Legislator* is to ascertain what *ought to be* the law. The function of the *latter* is *ethical*, his duty being to enquire what *ought to be* the law ; and he is to enquire *what is* the law in order to suit his intended provisions to the actual wants and to make himself intelligible. The *Lawyer*, on the other hand, has to confine himself to the *actual* or *positive* law, unless it be in any case vague, indefinite or defective, when only he might enquire what *ought to be* the law, assuming the Sovereign to conform to a certain standard.

53. *Discuss the proposition that laws are a species of commands. Explain the terms command, duty and sanction.*

A. A *command* is a signification of desire ; and it is distinguished from other significations of desire "not by the style in which the desire is signified, but by the power and purposes of the party commanding to inflict an evil or pain in case the desire be disregarded ;" and the above theory is correct in this sense of *command*. But it is not correct, if the idea of *reward* be included in the idea of the word *command*, or if it be *particular* and not general. When a person is liable to evil if he does not comply with a *wish*, he is said to be bound or obliged by the *command* ; or he lies under a *duty* to obey it ; hence, the words *command* and *duty* are correlative terms, the meaning expressed by each being implied by the other. "The evil which will be incurred in case a

command be disobeyed or a *duty* be broken, is called a *Sanction.* The *command* or the *duty* is said to be *sanctioned* by the chance of incurring evil. The word *command* implies (1) a wish or desire conceived by a rational being that another rational being shall do or forbear; (2) an evil to proceed from the former and to be incurred by the latter in case of non-compliance; and (3) an expression of the wish by words or other signs. For *Sanction*, see also question No. 118.

54. "*The proposition that laws are commands must be taken with limitation.*" *Explain and discuss this statement, pointing out the limitations referred to.* B. L. 1893.

Show how the anomalies arising from consideration of law as a command may be removed.

A. A *law* has been long described as a "*command*;" but though the statement is essentially true, it is inadequate and misleading. For, Austin has properly analysed a *command* into *three* things as shown in the previous answer; but they are not sufficient to cover all *laws*; *e. g.* laws, which are merely *declaratory*, or which *repeal* the preexisting law, or which because they can be disobeyed with impunity are said to be of *imperfect obligation* Similar objections are also made with regard to the *enabling statues*, the *laws* conferring *franchises*, and the *rules* of *interpretation* or *procedure*.

All *anomalies*, which arise from considering *law* as a *command*, disappear when it is considered as "a proposition announcing the *will* of the State, and implying, if not expressing, that the State will give effect only to acts which are in accordance with its will so announced, while it will persist, or at least visit with nullity all acts of a contrary nature."

55. *State whether the following may be called* **Law** *in its strict sense as used in Jurisprudence giving your reasons; viz.* (1) *International Law*; (2) *notifications by Government with*

regard to rules of rank and precedence, and orders to wear mourning ; (3) commands of the sovereign to particular individuals by name, orders issued by legal tribunals to individuals by name, orders of forfeiture to particular persons by name, the Acts passed for appropriation of revenue laws by Parliament ; (4) declaratory law ; (5) permissive law ; (6) imperfect law.

A. *International Law* is no *law* in the strict sense of the word ; for, it deals with the different nations living in different political societies, and not with the people living in one political society, and has therefore no *arbiter* and *sanction* in case of breach except public sentiment. The (2) class of subjects are not *laws* as no *sanction* is attached to them. The (3) class are not *law* as the commands and orders are *particular* and not *general.* The (4) class are *also* not *laws* as they simply declare the *duties* and are no *commands*, The (5) class consist of revocations of command and are not "commands," and hence they are not *laws*. The (6) class are also not *laws* on the ground that they have no *sanction* attached to them.

56. *It is said that no theory of religion or of morals, or of politics is involved in the strict view of* law. *How far is it correct ?*

A. Law, as defined before, does not really involve any theory of religion, morality, or politics, and it is equally true for Hindus, Mahomedans and Christians ; and also to the subjects of a monarchy or the citizens of a republic.

57. *What is the main distinction between Positive Law and all other laws as related by Austin ?*

A. Austin distinguishes Positive Law from Divine Law, Moral Law and Law of Nature on the ground that it refers to what the *actual law* is, while the *latter* laws refer to what *ought to be* the *law.*

58. *How does Thomasius distinguish between Morality and Law? State how such distinction cannot really be made.*

A. Thomasius distinguished *Morality* from *Law* by the fact that in the *former* compulsion is absent, while it is present in the *latter*. But as Locke has well said, "no man escapes the punishment of their censure and dislike who offends against the fashion and opinion of the company he keeps;" and hence, as *Moral rules* cannot be said to exist without appropriate *sanction*, no distinction can be really made between *them* and *Law* on the ground of *absence* or *presence* of *compulsion*.

59. *How do Morality and Legality differ from each other? Are they distinguished in the early stages of society?* (B. L. 1870.)

A. *Morality* differs from *Legality* in this that the *standard* of the *former* is *subjective*, whereas that of the *latter* is *objective*; for, actions to be legal are required to conform to *laws*, *i. e.*, rules set forth by the sovereign body of a State. But they were not so distinguished in the early stages of society.

60. *Distinguish between Law of Nature, Law of Nations, and Jus gentium.* (B. L. 1871.)

A. *Law of Nature* is a portion of Moral Laws, which supplies the more important and universal rules for regulating the external acts of men. It refers to the human or positive rules which are common to all societies in the character of law and morality, or morality alone. It implies also the rules or laws set to mankind by nature or the society of the *standard* to which human laws ought to conform. That portion of Positive Law, which is common to all political societies and is palpably useful is called *Natural Law* by modern jurists.

The Law of Nations is a portion of Moral Laws, observed

among different nations by mutual consent without there being any arbiter in case of dispute except public opinion It is properly speaking not *Positive Law*, but *Positive Morality*, or the moral code of nations.

Jus gentium was a body of rules, devised by the Romans, for regulating the disputes among foreigners, to whom they were unwilling to extend their Civil law. It was a system of *Positive Law* in force among the Romans as a body of rules which are uniform among all nations.

61. *Distinguish Positive Law from Divine Law and Principles of Morality.* (B. L. 1900).

A. Positive Law differs from Divine Law on the ground that it is set down by a determinate *human* authority, whereas the *latter* is set down by a determinate *superhuman* authority or God. Besides, the former is enforced by the sovereign, whereas the latter, it is believed, is sooner or later redressed by God In other respects except source and sanction, these two laws are similar. Positive Law differs from the Principles of Morality or Moral Law on the ground that it is set down by a *determinate* authority, whereas the *latter* is set down by *indeterminate* authority.

62. *What do you know of the conflict between divine and human laws? What is to prevail in case if there be any conflict?*

A. The State always takes care to incorporate into the Positive Law of a nation such laws and rules as are held in their religious books to be revealed laws; and hence, the alleged conflict is a rarity. But if it be found ever to exist, the positive human law is to be obeyed by the people of a political society.

63. *Describe what means were adopted in different countries as remedies against the gaps and hardships of Positive Law?*

And describe what does Bentham suggest for the same. Criticize them all.

A. The *Moral Laws* in England and the *Laws of Nature* in Rome afford instances of the remedies adopted in such cases. **Moral Law** :—The word "*mos*" implied at first *what was customary;* and from that sense it has come to mean *what is right.* The ideas of uniformity and rightness (derived from the adjective right) are present in Moral Law, which presumes the existence of an innate faculty to explain a common agreement; and when the same is called in question, its existence requires to be proved by reference to the principle of Moral Law. According to *Moral Law*, man has an *innate faculty*, which enables him to distinguish *right* from *wrong.*

Law of Nature :—Similarly, the Romans thought that the disposition of man in uncorrupted state is quite perfect; and hence, they held that such laws as men in uncorrupted state would have (which they call Laws of Nature) are good and should be obeyed. But as soon as a dispute arises as to what is the Law of Nature on a particular point; there is hardly any final and satisfactory conclusion.

Bentham holds that the Moral Law or Law of Nature is a mere pretence for powerful men to act according to their particular desire, or by making a sham appeal to something: and he suggests a *theory of Utility*, as the best criterion for judging between *right* and *wrong*; and according to him a thing which is capable of doing the *greatest good* for the *greatest number* of men in a society is said to be the best.

The above view of Bentham on Moral Law and Law of Nature cannot be said to be correct; for, when a man has to appeal to external standard in case of gap in law

(positive), it is best to appeal to the previous uniformity of conduct of men, which is implied in both the above laws; and the *theory of Utility*, if separated from experience (which is included in uniformity of conduct), is quite powerless to convince, and would equally serve to be a pretence for exercise of arbitrary power as Moral or Natural Law.

64. *Explain and illustrate the following propositions:— The agencies by which law is brought into harmony with society are (1) Legal fiction, (2) Equity, and (3) Legislation.* (B.L. 1894.)

A. It is a fact that in every society the wants and views of the people are always in advance (more or less) of law. It becomes therefore necessary to do something in order to maintain harmony, and this is effected by (1) Legal fiction; *e. g.* a man having no son desires to have a son; and this is effected by the rule of adoption. (2) By means of rules of *Equity* which are meant to provide for hard cases where there is no positive law. (3) By means of *Legislation*, when it becomes unavoidable or urgent for the well-being and safety of the society.

CHAPTER V.

SOURCES OF LAW.

65. *Explain how the term "source" as used in the expression "Sources of Law" is ambiguous, and what is the result of it?*

A. The term "*source*" as used in the above expression is ambiguous, as it is used in *three* different senses, *viz.*,—(1) the *quarter*, whence the knowledge of law is derived (*e. g.* Statute-book, Reports, Treatises); (2) the *mode in which*, and the

persons through whom, those rules which have acquired the force of law have been formulated. (3) the *authority*, which gives those rules legal force. The result of the term "source" being ambiguous is that the subject of the origin of law and the mutual relations of customary, judge-made and Statue-law, are involved in obscurity.

66. *What are the different sources of Law in accordance with the different senses of the term "source"?* *

A. In accordance with the aforesaid (3) sense, the *source* of law is only *one*, *viz.*, recognition by the State (either expressly through the legislature or the courts, or tacitly by allowance). **Sources** of Laws in the sense of the *causes* to which they owe their existence as rules, are, however *several*; *viz.*—(1) **Custom** or **Usage**, (2) **Religion**, (3) **Adjudication**, (4) **Scientific discussion**, (5) **Equity** and (6) **Legislation.**

67. (*a*) *Enumerate the different sources of Law.* (*b*) *Is it correct to say there are different sources of law?* (B. L. 1879.)

A. (*a*) See Answer to Question No. 66. (*b*) Properly speaking, it is not correct to say that there are different *sources* of law; for, there can be no *law* in the strict sense of the term before the formation of a State, although there might be moral and customary rules of conduct; and when a State is formed, such rules only as receive its sanction and support, are properly called *laws*, whether they be declared for the first time by the governing body or be in operation amongst the people from before.

68. *Enumerate the sources of English Law.* (B. L. 1888.)

A. The sources of English Law are the same as the

* The Institutes of Menu enumerates four sources of law:—*viz*, (1) Revelation; (2) Institutes of the revered sages; (3) approved and immemorial usages; (4) that which satisfies the sense of equity and is acceptable to reason.

sources of law in the sense of causes to which it owes existence, or as J. Markby has stated, in the sense of "places where, if a man wants to get at the law, he must go to look for it" See question no 66

69. *What is the primary and most direct source, or in other words, the exclusive source of law?*

A. *The declared will* of the *supreme* or *subordinate Legislature*

CUSTOM

70. *Define custom. How are customs generated and what legal force have they?* (B L 1889)

A *Custom* or *Usage*, says Prof Holland, is the "spontaneous evolution by the popular mind of rules the existence and general acceptance of which is proved by their customary observance" Markby defines it as "the uniformity of conduct adopted under similar circumstances on many successive occasions", and Austin says, it is "only a moral rule until established as law by the sovereign, either judicially or by direct legislation"

A *Custom* originates generally in the "conscious choice of the more convenient of two acts," or "in the accidental adoption of one of two indifferent alternatives ,", and when the same choice is repeated generally and for a long time, it ripens into a habit, and becomes a rule of action , and it is called a *Custom* When a man has got to do a thing, he naturally enquires what his forefathers did before, and what his neighbours are doing around him ; and he tries to follow them from a conviction, that what others did under similar circumstances must be good, as otherwise they would not have acted so ; and hence, *custom* arises from *repetition* and *adoption* of the same course of conduct for a *long* time.

The best illustration of the formation of a *custom* may be found in the mode in which a path is made when a man has to cross a common; he does it in the way which is suitable or convenient to him or which he adopts by accident; and when a track is thus made, other persons afterwards generally follow in it, and thus a path is made.

Customs have no *legal force* as such; but they have it when they are established as law judicially or by legislation.

71. *Give some examples of customs which are laws and not laws.*

A. Customs *as laws*; *e. g.* succession of the eldest son alone in England, and of all sons together in India; polygamy among Mahomedans and monogamy among Christians. (2). As *not laws*; *e. g.* burying the dead amongst Christians and Mahomedans, and burning the same among Hindus; sitting on chairs among Europeans; wearing pigtails among Chinese.

72. *How and at what moment does "custom" become "law"?* (B. L. 1900)

A. *Custom* becomes *law*, or is transformed into *law* by the fact of its being recognised by the State either by legislation, or by judicial decision. The existence of customs is proved by reports of previous decisions and books of judicial sages. When the Positive Law is silent, or vague, and a party relies on *usage*, he is required to prove it; and the courts accept it when it covers a given set of circumstances, is consonant with Positive Law, and is found to be a uniform, universal and reasonable rule of conduct. A *custom* becomes *law* from the date of its recognition by judicial decision or express legislation. When recognized by judicial decision, it takes effect *retrospectively*, not prospectively as has been erroneously supposed by Austin.

What are the essentials of a valid custom? (B. L. 1879.)

A. (1) Antiquity, (2) uniformity, and (3) reasonableness.

74. *What sorts of customs are adopted by the English Courts?*

A. The English courts require *two* conditions before a *custom* is adopted as *law*, *viz.*, (1) that it should be proved to exist; and (2) that it is reasonable.

75. *What do you understand by the expression Common Law? Is it actually unwritten? What are the sources of English Common Law?* (B. L. 1870.)

A. *Common Law* implies "custom of the realm" in England. Aristotle spoke of "*Common Law*" as "the law which is in accordance with nature and immutable." It is not actually "unwritten," but is said to be so in contradistinction to *Positive Law*, which only is said to be "written" or promulgated law. The sources of English Common Law are Treatises and Reports.

76. (*a*) *In what different senses has the term customary law been employed?* (*b*) *How far is it true that customs are not laws until they have been enforced by judicial decision?* (B. L. 1899.)

A. (*a*) The different senses are (1) moral rule; (2) positive law made by judicial decision upon pre-existing custom; (3) positive law made by the sovereign upon the pre-existing custom by statute or judicial decision. (*b*) It is true in this sense that *customs* which are not incorporated into statutes are not strictly *positive laws*, until enforced by judicial decision.

77. *Austin says customary laws are imperative. Explain his meaning. What adverse opinions on this point does he combat?* (B. L. 1871.)

A. As customary law is *positive* law based upon previously existing custom, it is established by the State directly or circuitously; and hence, it is *imperative*. Austin combats the

adverse opinions that (1) custom is an independent source of law apart from its recognition by legislation or by judicial decision; and (2) Judiciary law is the creation of the judges by whom they are established immediately.

78. (*a*) *What are the different theories with regard to the authority of custom as law and by whom are they held? Discuss them.* (*b*) *Compare the result of custom as law with positive law.*

A. (*a*) Austin and Holland hold that a *custom* as such exists as a moral rule of action, depending on customary observance, and originating in the conscious choice of an individual due to convenience or accident; and that it becomes law only when it is established by the sovereign by legislation or judicial decision. But Savigny, Puchta, Hegel and Blackstone maintain that the growth of law does not depend upon individual arbitrary will or accident; that it is "begotten in the people by the popular intelligence;" that customary observance is not the cause of law, but the evidence of its existence; and Law is said to be the evolution of the Deity. The *latter* school of Jurists, called the *Historical School*, find the authority of *custom* upon the *consensus utentium*, *i. e.*, upon the fact of its observance by those who have adopted it, so as to make it independent of the sovereign authority. But this view is objectionable on these grounds *viz.*, (1) laws based upon custom are binding not on the ground that they are adopted by the people and are immemorial, but on the sanction of the sovereign; (2) such laws are often repealed by legislation or judicial decision The truth in this view is that the adoption of customary rules is unconscious. They contend that the principle must be prior to its applications; but in truth a principle is nothing else than a generalization of the various applications.

(*b*) *Result* :—*Custom* as *law* is better adapted to national feeling than *positive* or manufactured law ; and its importance as *custom* declines "with the growth in a nation of conscious critical power."

78. *A. Whence and how do laws based upon custom and judicial decision derive their binding force ?* (B. L. 1881.)

A. Both the laws based upon *custom* and *judicial decision* derive their binding force from the Sovereign. Judicial *decision* derives its force from the fact that the judges are delegated the power of Sovereignty for administration of justice ; and it happens also that new rules of law enunciated in judicial decisions are at times incorporated into express law or statute. A *custom* may be accepted or rejected in a judicial decision, and also by express law.

79. *Is there any difference between customary law and law by direct legislation* (1) *as to their source, and* (2) *as to their binding authority ?* (B. L. 1888.)

A. No. Both these kinds of laws have the Sovereign as their source in the sense that it is the *only* authority which gives them binding force. But using the word *source* in the sense of *cause* of existence, the *former* has *custom*, and the *latter* has *Reports* as *source*. Both of them derive their binding force as *law* from the Sovereign.

80. *Criticise the expression—"a custom is an exception to general law."*

A. It is true that the greater part of the *rules* now known as *customs* are exceptions to general law ; but it is not correct to say that it is generally true to Customary Law. Many customs recognised by law are not exceptions ; and Customary Law forms a great portion of the Positive Law in all countries. When a *custom* is transformed into *law*, it is called law and is no longer called a *custom*. The ordinary rules of Inheritance,

which orginated in *custom* are now known as the Laws of Inheritance; and the exceptional rules of Inheritance only—*viz*, (1) the succession of eldest son in India as heir, and the same of all sons in England are now called *customs*.

RELIGION.

81. *Describe Religion as a source of Law.*

A. *Religion* plays an important part as a *source* of Law; for, all nations derive much of their *law* from it; and such laws are called *derivative*, *i. e.*, set down by God to man through "revelation." Having regard to *Religion* as a *source of law*, the Greeks described Law as "a discovery and gift of God." The priestly colleges exercised much influence upon the development of the Law of Rome. It has been long said. and only recently questioned that "Christianity is part of the law of England." The Hindu and Mahomedan Laws are based upon the 'Vedas,' and the "Koran" respectively which are said to be "revelations," and are based upon their religions.

ADJUDICATION.

82. *What are the different terms for "Adjudication?"*

A. They are:—(1) "*Judicial decision*," (2) *Judge-made law*," and (3) "case law."

83. *What are the different theories with regard to Adjudication as a source of Law? and who are their supporters?*

A. There are *two* theories:—(1) The judges are merely to administer and expound the old law, and not to pronounce a new one. Blackstone was of this view.

(2) Their function is no doubt to attest and confirm the old law; but they are also entrusted with power to

make rules for cases not provided for by Positive Law, and also to modify old law in order to adapt it to the new wants of society and thus to carry out equitable ideas. Austin and Holland hold this view, and most modern writers agree with them. The judges do not expressly exercise any power of making laws; but they do it by way of expounding and applying law, and deciding upon questions with regard to existence of customs.

84. *Describe what weight is attached to decisions of Courts in different countries.*

A. In England and United States, they are cited with much confidence as an Act of Parliament, and are often acted upon by other Courts; but on the continent of Europe, they are powerless to compel a Court to take a similar view, though useful in the way of showing the view, which has been taken by qualified men.

85. *What is the modern tendency of the aforesaid two opposite views?*

A. The modern tendency is towards an approximation of the said theories. For, in England and the United States, such decisions are being now more freely criticized than before; and on the continent, they are now being reported more carefully and cited with better effect.

86. *What is the origin of the authority to make new law by judicial decision?*

A. The duty of the King, in time of peace, is to try law-suits. But he can really do it himself only in the simplest condition of society. With the progress of society many matters require his attention, and he can hardly himself attend to all of them. Hence, the wise, the learned and the elderly persons who sat with him as advisers are deputed to try suits; and thus a class of people called *Judges* arise; and



they represent the King in the Courts they preside over. This change in the person of the Judge does not, however, materially affect his character or function.

87. *How does a Judge make Law?*

A. By successively deciding similar cases in the same way, the Judges give currency to some rules, which come then to be looked upon as Laws; and sometimes the legislature takes advantage of those decisions, and incoporates them into Positive Law. The Judges do not expressly exercise the power of making law. But they are required to exercise discretion in cases where there is gap in positive law; to expound and apply law to particular circumstances which come up to them for decision; and also to decide upon the existence or otherwise of alleged customs; and in doing these acts, they sometimes propound rules which turn out to be new, and are called laws.

88 *Criticise the expression that "legislation by Judges is a usurpation."*

A. The Judges evolve a rule by consideration of all the circumstances of a case; and then give currency to it as *Law* by successive and similar decisions of similar cases. A Judge, who follows a case-law, merely substitutes for his opinion the concurrent opinions of others; and he cannot therefore be called a breaker of law. As the Judges have got no express power of legislation, it is surely usurpation on their part to make new laws, if they exceed the bounds of discretion and authority vested in them.

89. *What are the main characteristics of case-law?*

A. (1) It is *ex post facto.* (2) It is invariably mixed up with the peculiar circumstances of each case in which it is applied. (3) It is *flexible*, *i. e.*, capable of being adapted to any combination of new circumstances.

90. *What are the objections against case-law, and what are its advantages?*

A. The objections are (1) on account of its *bulk*; for, reports increase in course of time, and become ultimately a huge and undigestible mass; (2) the *difficulty* of ascertaining the law; (3) its *inconsistency*; for, different Courts often decide the same matter differently, or under different circumstances which cannot be easily distinguished and explained. The advantage of case-law is its *flexibility.*

91. *Describe the process by which a case-law is extracted.*

A. *First*, all cases bearing on the point at issue as are to be found in the reports have to be studied and examined; and the *next process* is to *eliminate* all the qualifying circumstances of each case; and to apply it to the particular circumstances of the case in question; and in doing so the opinon of the Judge not bearing directly on the questions at issue in a case—is considered extra—Judicial or *obiter dictum*, and is not regarded as any authority. It is only the decision of a case so far as it affects the suitor which is to be considered as *law*.

SCIENCE.

92. *Describe what part does Science play in making Law?*

A. The discussion of Sciences, and especially of Jurisprudence, has often led to the adoption of many *rules* as *laws.* The works of the great Jurists and Commentators, *e. g.*, of Lord Coke, Hale, Littleton in England. Dayabhaga and Mitakshara on Hindu Law, and Hedaya and Fatwar Alamgir on Mahomedan Law are looked upon with much respect. "The Practice of Conveyancers" is also similarly looked upon in England.

93. *Compare commentaries with Judicial Law in regard to (1) authority, (2) form.*

A. When a commentary appears at first, it is used as an argument to convince, while a Judicial Law is used from the beginning as an authority which binds. But when the said commentary is referred to and followed by judges, it gains in importance till at last by successive recognition it acquires the position of an *authority*.

Case-laws are concrete, and deal with particular facts, while the rules enunciated in the commentaries are abstract, in which new circumstances are foreseen and provided for.

EQUITY.

94. *What do you understand by Equity?*

A. Equity is a body of rules, which are made by a high functionary duly invested with power for that purpose for harmonizing them with the views of advancing civilization. They are made apparently with a view to lax the rigidity of existing law, and as a remedy for its inconvenience and inapplicability in accordance with such rules as are discoverable in his judicial conscience of Moral Law in England, and of Law of Nature in Rome.

95. *Compare the Jus Prætorium and English Equity.* (B.L. 1886.)

A. The Jus Prætorium and English Equity are the *two* great historical instances of resort to the formation of new rules for meeting the demands of advancing societies where the law is not sufficient. It is a fact that their *earlier* well as *subsequent* history is similar.

The Prætor at Rome was a high functionary who used by virtue of his office to exert a power over all judicial processes. Each Prætor on assuming office used to give a public notice as to the modes in which he meant to grant relief against the rigidity of the existing law. Hence, arose a body of rules of

Law of Nature called "Jus Gentium," for protecting possession by Interdicts and fictitious Actions, which had equal advântages with ownership. Hence, also such contracts as were not recognized by Law and such wills as were not sanctioned by the *comitia* &c., were also protected

There were cases in which the King's conscience was moved by an injustice in England for which there was no remedy at Common Law. The King was required to try these cases by virtue of the high prerogative he possessed. But the Chancellor in England is said to be the "Keeper of the King's conscience;" and hence, the above cases were referred to him for trial in such way as he thought proper in accordance with moral law. The Chancellor in England could not previously announce, like the Prætor at Rome the rules he would observe. He could frame new writs, but they rested for their validity upon the opinion of the Common Law Judges. He used therefore to decide each case separately with regard to its merits. The subsequent history of both the above systems is also similar in this way that in course of time the rules of *Equity* become rigid like the Common Law, and are ultimately adopted by the legislature. The rules of the Prætors at Rome were adopted into law by the legislation of Justinian as the rules of the Chancellor in England were adopted into law by the Judicature Act of 1873. Thus *Equity* ceased to be an independent source in both the above systems

Beside , the following may be noticed also as their common features :—(1) Both systems supply deficiencies in Common Law by means of a functionary exercising extraordinary powers; (2) both practically override the Common Law though they shew apparently due difference to it; (3) both are Judge-made law, and not statute-law, as they depend upon

the decisions of the functionary in question; (4) both of them are unsystematic; (5) both are based upon false assumptions of superiority over Common Law.

96. *Criticise the expression "Equity varies like the Chancellor's foot."*

A. Formerly as there was no fixed law of Equity, each Chancellor acted according to his own whim or intelligence; and hence, similar cases being differently decided by the different and successive Chancellors gave rise to the above expression. But Lord Eldon fought against it, and laid down fixed principles, which were then followed in the Courts of Chancery; and hence, the above accusation does not now seem to be tenable and true.

97. *Why does Equity precede legislation in legal history?*

A. Because the new idea of Law is that it is a stable rule, which admits of no modification while equity is a *flexible* rule; and it is not reasonable to suppose that in the early state of society, the Courts adopted inflexible rules of Law.

98. *What are the main features of Equity, and what is the avowed function of the Courts of Equity?*

A. The flexibility and adaptability to special circumstances are the main features of Equity; and the avowed object of the Courts of Equity is to provide for remedies in special cases for which there is no remedy at Common Law. Equity is *expost facto* and *concrete*, unlike an Act of Parliament, which is *prospective* and *abstract*.

99. *Give Maine's definition of Equity, How does it differ from Legal Fictions and Legislation?* (B. L. 1892.)

A. Equity, says Maine, is a body of rules of intrinsic ethical superiority, which exists side by side with Common Law, and supersedes it at times on account of its superior sanctity of principles. It differs from Legal Fiction as it

interferes with Common Law in an open and avowed way; and from Legislation on the ground that it claims no authority from any external source but on the ground of its principles to which all law, it is said, ought to conform.

100. *What is the rule of Equity in India and when is it applied? Why is it said to be dangerous?*

A. In India there is much gap in law. There are many matters, for which there is no Positive Law; and the rule for the guidance of the Courts in these cases is to act according to "Justice, equity and good conscience." Now it is well-known that the bar in India is not so able; and the public voice has also not sufficiently grown up Hence, it cannot be said that there is sufficient check for the Courts. Besides, as there are diverse nations in India, the original Court and the successive Courts of appeal might be presided over by persons of different creeds whose ideas of Equity and Justice would necessarily differ; and hence, there is ample room for fear of injustice.

101. *Examine Sir Henry Maine's allegation that a time comes when Equity ceases to be a productive source of legal rules and explain the causes which in his view lead to such a result.* (B. L. 1899.)

A. Sir Henry Maine thinks that the rules of Equity do in course of time lose their elasticity, when they are carried out to the fullest extent, and become rigid rules, unable to satisfy the advancing notions of morality in a society; and he opines that this result is due to the Courts of Equity having originally adopted certain moral principles for their guidance. The function of the Judges is not so much to enforce the rigid commands of a sovereign as to redress grievances or to administer "Justice." The essential features of the rules of Equity, *viz.*, their flexibility and adaptability to special circum-

stances conflict with the notion that the rules to be administered are rules of *law*, positive and imperative.

LEGISLATION.

102. *Define "Legislation," "Legislature," "Legislate," and "the Acts of Legislature."*

A. The function of sovereignty, which makes laws, is called "*Legislation.*" The persons, who deliberate on the nature, form and substance of laws before they are passed, are said to form the "*Legislature.*" When the Sovereign declares its *will* in the form of a *law*, it is said to *Legislate*; and the laws thus made are called the "*Acts of the Legislature.*"

103. *How is the work of Legislation carried on and by whom in a State?*

A. In a State, the laws are generally made by *two* organs, *viz.*, (1) the *Legislature*, which makes new laws, and (2) the *Courts*, which generally administer and confirm old laws, but in the course of so doing, introduce many new rules of law.

Laws are framed by the Legislature by virtue of authority derived from the Sovereign; and they acquire the force of law when they receive the Sanction of the Sovereign. Sometimes the Sovereign delegates powers of Legislation to subordinate officers or bodies of persons; and in such cases, their sphere of action is generally prescribed; and the Courts have often therefore to decide whether a particular rule of law (*e. g.* rules and bye-laws prescribed by a Railway Company or a Municipal Corporation &c.) is good law in the sense that it is quite within the power delegated. New laws become necessary with the progress of society as new occasions arise, and the ideas of people change.

104. *Is there any limit of the power of the English*

legislature to make laws? Is there any difference in this respect in the United States? (B. L. 1872.)

A. The powers of the United Congress are limited by a constitution, which it cannot alter; and it rests with the Supreme Court to declare whether a certain act of the congress is Law or not. But the British Parliament is not subject to any such court.

105. *How are the laws made in the colonies of England?*

A. The colonies of England have got by delegation from the Sovereign of England the power to make their own Laws, subject of course to the supreme authority.

106. *Where lies the power of legislature in British India and how has it been conferred?* (B. L. 1871.)

A. In India, there is (1) the British Sovereign (king or queen) and the Parliament as supreme authority. Next (2) the General Legislative Council of the Governor-General. Then the local councils of the several subordinate Governments. These powers have been granted by the India council Act.

107. *What should be the object of legislation?* (B. L. 1871.)

A. To make rules or laws conducive to the interests and well-being of a society.

107 *A. Describe Sir W. Markby's views as to the powers of subordinate Legislative bodies.*

A. It has been truly remarked by Sir W. Markby, that the subordinate Legislative bodies being themselves limited in their power of making Law by the supreme authority from whom they derive their power can delegate the same power only to the extent they possess, and not to any greater extent.

108. *Distinguish between "written" and "unwritten" law, and criticize on the propriety of these expressions.*

A. The law directly made by the supreme authority of a

State, or with its sanction by any subordinate authority, is called "*written law*"; and all other laws, derived from whatever source, are called "*unwritten laws.*" In the case of *written law,*" the Sovereign gives it contents (frames it) as also legal force; but "unwritten law" derives legal force only from the Sovereign, and its contents are given by the popular tendency, professional discussion, judicial ingenuity &c. Besides "written law" operates from the date when it is sanctioned by the Sovereign, *i.e.*, *prospectively*, while "unwritten law" operates, when it is accepted as valid and being in existence from before it is recognised and attested by a tribunal, *retrospectively*.

The origin of these expressions was probably due to the fact that laws passed by the Sovereign were "written," while all other laws were not necessarily so *written*. But in truth, these expressions are now hardly justifiable as all the sources of law consist of writings.

CHAPTER VI.

OBJECT OF LAW.

109. *Describe and discuss the views of the Chief Jurists with regard to the characteristics of Law.*

A. There is much difference of opinion among the jurists on this point. Some of them, including Hobbes, Kant and Savigny, have considered law as "*coercive*"; "it was added because of transgressions." They describe its function to be "the preservation from interference of the freedom of the will." This view of Law is purely *negative*, and though sufficiently wide to cover all rules of human action is yet

too narrow to cover some laws ;' *e. g.* laws which provide for the organization of a ministry of education, or grant copies of newly published books to great libraries.

Another school of writers, headed by Krause and Ahrens, have given it a *wider* and *positive* conception, and described it as "organizing or harmonizing the conditions under which the human race accomplishes its destiny by realizing the highest good of which it is capable." They consider a State as an organization for the application of "Law," *i. e.* "controlling power," required for the pursuit of the highest good of individuals and society. Bacon, Bentham, Locke, and Liebnitz belong to this school.

Really, Law is something more than police or coercive ; and the State is something more than an "institution for the protection of rights." Locke says the end of Law is "not to abolish or restrain, but to preserve or enlarge freedom." Bentham says the only defensible object of law is to secure the greatest happiness of the greatest number .of the members of a society.

10. *What are the immediate objects of Law? What are its remote objects? What is the essential basis of Positive Law?* (B. L. 1898.)

A. The *immediate* objects of Law are the *creation* and *protection* of legal rights. Its *remote* objects are to promote and secure the highest well-being of society. The essential basis of Positive Law is that it aims at securing the greatest happiness of the greatest number of members in a society.

11. *The happiness of the people is the only true end of Government. Discuss this proposition* (B. L. 1895.)

A. The conception of Government or State has as shewn before *double* character, *viz.*,—(1) paramount over all matters with in and independent of all matters outside its territory.

Now, as the people of a State is to obey the State implicitly and consider it as paramount, they have a right that the Government is to look after their interests. Indeed, the existence of the Government is justifiable only on the ground that it is to look after the well-being of the society, and to guard the interests of the people composing it; and hence, it is said that the true end of Government is to secure the happiness of the people.

111 *a*. *How is Jurisprudence concerned with the purposes and means of Law?*

Jurisprudence is not so much concerned with the purposes which Law subserves as with the means by which it subserves them. The purposes of law are its remote objects. The means by which it effects those purposes are its immediate objects.

CHAPTER VII.

PART I.

RIGHTS.

112. *What is meant by "right?" Shew how is this term ambiguous. How has Blackstone used it ambiguously?*

A. *Right* implies the same thing as "*a right*"—*i. e.*, "*a capacity*." It is *ambiguous*, as it bears also another sense, *viz.*, "*opposite of wrong*," when it is considered as an abstract term derived from the adjective "*right*," in the same way as "*justice*" is derived from the adjective "*just*." Blackstone used it ambiguously as he opposed "*rights*" in the sense of "*capacities*" to "*wrongs*" in the sense of "*unrighteous acts*."

113. *Shew how the English phrase* "**a right**" *is free from the ambiguity, which besets such phrases in many other languages.*

The Latin "*jus.*" the German "*Recht.*" the Italian "*Diritto,*" and the French "*Droit*" express not only "*a right*" but also *Law*" in the abstract. Hence, the Germans, in order to express the distinction between "*Law,*" and "*a right,*" are obliged to resort to such phrases as "*objectives,*" and "*subjectives*" *Recht*, meaning by the former, *Law in the abstract*, and by the latter, a *concrete right*. The identity of terms suggests an identity of ideas; and hence, the German writers feel much difficulty in keeping apart *law* from the *rights*, which it regulates. But these difficulties do not arise from the English phrase "*a right.*"

114. *Define* "*a right*" (B. L. 1891.) *Define* "*legal right*" *and also give an analysis of it.* (B. L. 1900.) *With what right is Jurisprudence specially concerned?*

A. "*A right*" implies "a man's capacity of influencing the acts of another, by means, not of his own strength, but of the opinion or the force of society." "*Legal right*" implies "capacity residing in one man of controlling with the assent and assistance of the State the actions of others" For analysis of "right," see q. no. 127. Jurisprudence is specially concerned with "*legal right.*"

115. *Distinguish between* "*moral right*" *and* "*legal right.*" (B. L. 1894.)

A. "If a man by his own force or persuasion can carry out his wishes, either by his own acts, or by influencing the acts of others, he has the "*might*" so to carry out his wishes."

"If, irrespectively of having or not having this "*might,*" public opinion would view with approval or at least with acquiescence, his so carrying out his wishes, and with dis-

approval of any resistance made to his so doing then he has a "*moral right*" so to carry out his wishes."

"If, irrespectively of his having, or not having, either the might, or moral right on his side, the power of the State will protect him in so carrying out his wishes, and will compel such acts or forbearances on the part of other people as may be necessary in order that his wishes may be so carried out, then he has a "*legal right*" so to carry out his wishes."

116. *Define "duty," "moral duty" and "legal duty," and state what are their correlative terms as also of "might,"*

A. "*Duty*" implies the "active or passive furtherance by others of the wishes of the party having the right."

Where such furtherance is merely expected by the public opinion of the society in which they live, it is their "*moral duty*," and "where it will be enforced by the power of the State to which they are amenable, it is their "*legal duty*." The correlative of "duty," "moral duty," "legal duty," and "might" are "*right*," "*moral right*," "*legal right*," and "*necessity*" or "susceptibility to force" respectively.

117. *Describe the relation of "Law" to "Rights" and "Duties."*

A. *Law* declares what advantages it will protect as being "*legal rights*," what disadvantages it will enforce as being "*legal duties*," and what methods it will pursue in so doing.

118. *What is meant by the "sanction" of law*? (B. L. 1871.)

A. "The intervention of the State, either of its own accord or at the instance of others, to cancel the effects of acts, which do not conform to the course prescribed by it" is called the "sanction" of law. The State intervenes not only to punish, but also to prevent, illegal acts, as well as to effect restitution; but the announcement of State intervention

before illegal commission or omission operates to create threat of punishment upon the general mind; and hence "sanction" is a punishment to a wrong-doer or to one who neglects to comply with the prescribed courses of *procedure*. See also question No. 53.

119. *What are the ultimate sanctions of all laws? From what authority do these sanctions emanate?* (B. L. 1881.)

A. Suffering, according to Austin, is the ultimate sanction of all laws. It is of *three* kinds, *viz.*—(1) bodily pain (*e.g.* death, whipping), (2) imprisonment, and (3) forfeiture. All these *sanctions* emanate from the sovereign authority.

120. *It is a general rule that Courts of law will not move unless some duty or obligation is broken. What exceptions, if any, are there to this rule?* (B. L. 1881.)

A. The exceptions may be found in the following cases, *viz.*—(1) in the case of crimes, the courts of law move of their own accord; (2) they move also in cases where there is a reasonable apprehension of breach of duty or obligation without any expectation of proper redress; (3) the law of trust throws some duties upon the Court for granting advice to trustees.

121. *Distinguish between "Substantive" and "Adjective" Law.*

A. Law defines the rights which it will aid, and specifies the ways in which it will do it. So far as it defines, thereby creating *right*, it is called "*Substantive*" Law. So far as it provides a method of aiding and protecting right, it is "*Adjective*" Law, which is better known as "Procedure," and which is known also as "Formal Law" in Germany. "Adjective" Law is called "adjective," because it exists only for the sake of "*Substantive*" Law.

122. *Criticize "Sovereign has no rights or duties."*

A. Following Austin, J. Markby states that the Sovereign has no rights or duties. It is argued that as no person can be said properly to issue a command upon himself and as the Sovereign only issues commands or laws, which creates rights and duties, the Sovereign cannot properly be said to have rights and duties. But Prof. Holland differs from this view, and states that it is not improper to hold that the State owns rights and owes duties as it prescribes to itself. The duties owed by the State are often enforced in England by the *Petition of Right*. The rights of the State also appear from the form of indictment current in England and America, *e. g.*, the State on the prosecution of *A* against *B*, and the State against *D*.

123. *It is true that every right has a duty. But is the reverse also true? Illustrate your view by example.*

A. It is not correct to say that every "*duty*" has a has a corresponding "*right*," though the reverse is true; *e. g.*, it is a duty of men to abstain from cruelty to animals, and to abstain from acts of immorality; but no person has corresponding rights unless it be said that society has them, which however is not correct as rights must exist in particular individuals.

124. *What is the chief characteristic of "Right" and "Duty" in Common Law, and why is it so?*

A Every "*right*" as well as "*duty*" is specific as Law; for, Law is a command, and as every *command* must by its nature be *specific*, so every *Law* is *specific*. Again, as every "*right*" or "*duty*" is the result of a *command* or *Law*, it is also *specific*.

125. *Law is said to be "formulated and armed public opinion, or the opinion of the ruling body." Explain this.*

A. Law declares that certain states of things and courses of action, will be approved of by it, and that invasion of these

states of things, and contrary courses of action, are sure to be followed by an intervention on the part of the public or by the ruler of a State in order to effect restitution; and further, that it will enforce restitution and protect rights by means of *sanctions*.

126. *What is the real meaning of all laws?*

A. It is this that the State will not recognize, but will ignore acts which do not conform to the course prescribed by it; and it will render no help to them; and further, that it will interfere of its own accord, if necessary, or at the instance of others who are affected by them, to cancel their effects.

CHAPTER VIII.

PART II.

ANALYSIS OF RIGHT.

127. *Give an analysis of the conception of "right."* (B. L. 1898).

A. A "right" may be analyzed into the following *four* elements:—

1.	2	3	4
The person entitled.	The object.	The Act or Forbearance.	The person obliged.

The first element, *viz.*, *the person entitled to a right*, may also be described as the *person* "in whom the right resides," or who is "clothed with the right," or who is "benefitted by its existence." Holland calls this person as "*the person of inherence.*" The *fourth* element, *viz.*, *the person obliged*, may also be described as the person, "from whom acts or forbearances can be exacted," or "against whom the right is available," or "whose duty it is to act or forbear for the benefit of the subject of the *right*. Holland calls such

person as "*the person of incidence*," and he calls the *third* and *fourth* terms as "*the object*," and "*the act*" respectively From the above analysis, it will be evident that the *first* and the *fourth* (or last) terms are *a person*. The *second* term is the object of right (whether it be a physical thing or otherwise), if any, (for, a large class of rights has reference to no object) ; and the *third* term is made up of the acts or forbearances to which the person in the *fourth* term is bound.

128. *What are the terms which a man must well understand if he is to acquire clear ideas of "Right," its acquisition, enjoyment, transfer and extinction ?*

A. They are (1) "Person," (2) "Thing" and (3) "Fact," including *Event*, and Act of omission and commission.

129. *Define "a Person," and describe the important points of notice with regard to it. Distinguish a Juristical" person from a "real" person. Give some instances of Juristical persons.* (B. L. 1889)

A. (1) *A Person* is "a man, capable of rights, and liable to duties." Hence, a *person* may have *rights* ; and some rights may also be available against him, *i. e.*, there may be persons of *inherence* as also of *incidence*.

(2) *A Person* may be (1) "*natural*" or (2) "*artificial*" —when *natural*, he must be a *living human being* (*i.e.*, not a *monster*), *born alive* (not always, for an infant born dead may be supposed to be born for the purpose of getting a legacy, surrender of copyhold estate, &c.), though he need not be *rational* ; and he must be recognised by the State as a person ; *e.g.* not a slave under the absolute control of his master. An "*artificial*," "*conventional*," "*corporate*," or "*juristical*." Person is a group of men or a mass of property capable of rights and duties out of pure fiction, in the eye of law, like an ordinary person, having a legal status.

Artificial persons are of *two* kinds ; *v.z.*, (1) *Universitates Personarum, e. g.* States, Churches, Colleges ; and (2) *Universitates Bonorum, e.g.*, funds left to pious uses without a trustee ; the estate of a bankrupt, or the estate of an instestate before administration.

Artificial person comes into existence when (1) there exists a group of persons or mass of property, (2) the character of a real person is given to the same by a general rule, *e.g.*, Companies Act 1862 ; or special Act of Sovereign power, *e.g.*, an incorporating Statue or Charter. Universitates Personarum comes to end (1) by failure of its component parts, (2) by judicial proceedings which lead to the winding up of a company, (3) by forfeiture of privileges, (4) by surrender of its charter. A *Universitates Bonorum* comes to end in various ways.

There are different *grades* of persons, depending upon (1) freedom, (2) maturity, (3) sex, (4) sanity, and (5) citizenship.

130. *What is meant by a juristical person? In what respects does a Corporation differ from a Partnership?* (B. L. 1883.)

A. A "*Juristical*" person, no doubt, implies generally a group of persons having common object ; but it may also contain a *singular idea*, as in the case of an '*idol.*' All groups of persons combined for a common object are not *juristic ; e. g.* the Parliament, a religious or literary club. A *juristic* person can only be formed when it is *registered* and *incorporated* in accordance with law ; but a *Partnership* does not require to be so registered. When *incorporated*, a *juristic* person differs from a *Partnership* in this way that its members have no custody or control of the capital, and they cannot dispose of it as well as they can not be sued forthe debt, but in the case of a Partnership, the members are the *joint owners* of the

stock-in-trade and have custody and control of it; and they can sell or dispose of it; and each of them is individually liable for the debt of the firm.

131. *Describe a "Thing" with its important features.*

A. A "*Thing*" is the *object* of a "right," *i. e.*, it is an *object* "over which one person exercises a right, and with reference to which another person lies under a duty." "*Things*" in this sense are divided into (*a*) *material* objects, called also, "physical things," or "*rescorporales*"; *e. g.*, a box, a cow, a slave, (*b*) *intellectual*, or *artificial* objects, or "*resincorporales*" (*e.g.* a trade-mark, and easement) *i.e.*, *groups* of *advantages* which for shortness are treated by law as if they were *material* objects. This use of the term "*Thing*" for artificial object was borrowed in legal science from speculative philosophy. Legal science recognises *things* only so far as they are capable of standing in relation to the *human will*; such things are *physical* or *artificial*. A *physical* thing is defined as "a locally limited portion of volitioness Nature," but it is perhaps better defined as "a permanent external cause of sensation"; and it is therefore distinguished from an "*Event*," which as a cause of sensation, is transient. *Physical* things are of *three* kinds; *viz.*, (1) a *simple* thing, *e. g.*, a dog, a stone, a piece of wood; (2) a *compound* thing, *e.g.*, a house, a book, a box; and it may be either *different* from its parts, as a house, or a mere *aggregate* of them as a bar of gold or silver; or (3) an aggregate of *distinct things* conceived of as a *whole* *e.g.*, a regiment, a flock, which may continue to exist though all its parts are changed.

"*Intellectual*, or *artificial* things" might include all rights; but the Romans did not include "dominium" under it. Some things of this class are aggregates of duties as well as of rights, *e g.*, hereditas, copy-right, &c.

Things may be also divided into :—

2. (*a*) *Divisible*, or (*b*) *Indivisible.* A thing is said to be legally *divisible*, when it can be divided without its value or essence being affected by the division ; *e. g.*, a horse or a picture is juristically indivisible though physically divisible. But it may be divided into several ideal parts ; *e. g.*, a slave, or an estate owned by several persons jointly.

3. (*a*) *Moveable*, and (*b*) *Immoveable.*

4. (*a*) Things, which are capable of private ownership and (*b*) which are not so capable ; *e. g.*, air, which cannot be appropriated by anybody ; palaces and ships of war, which are owned and used by the State only ; roads and parks owned by the State, but used by the people.

5. (*a*) *Principal*, and (*b*) *Accessory.*

6. (*a*) *Consumed by use*, and (*b*) *Not so consumed.*

7. (*a*) *Fungible*, *i. e.*, all examples of which are equal ; *e. g.*, a rupee, a sovereign, a pound of sugar are of the same class ; and (*b*) *Non-fungible*, *i. e.*, different examples of which are dissimilar ; *e. g.*, dogs, slaves.

132. *Define " Facts " and state how they may be divided ? Define " Events," and describe their main features.*

A. " *Facts* " are defined as " *transient causes of sensation* " ; but this definition is inadequate. " Facts " are either "*events*" or " *acts.* " *Events* are either (1) movements of external nature ; *e. g.*, earthquake ; or (2) acts of a man other than the man whose rights or duties may be considered. The *events* which produce most legal effects are (*a*) change of place, and (*b*) lapse of time.

133. *Describe " Act " and " Forbearance. " What are the essential elements of an " Act ? " Describe " Will " and " Consciousness." Shew when are acts said to be " intended," and when done " maliciously." Shew also how the intellectual*

phenomenon in will may vary in different persons and at different times.

A. "*Acts*" are "*movements of the will.*" "They are "*inward,*" when there are mere determinations of the will; and "*outward,*" when the same "produce effects upon the world of sense." *Jurisprudence* is concerned only with "*outward Acts*"; and hence, an "Act" may be defined for the purpose of it, as "*a determination of will, producing an effect in the sensible world.*" The *effect* of an "Act" may be *positive* or *negative*; and when the latter, it is properly described as a "Forbearance."

The essential *elements* of an "Act" are:—(1) *exertion* of the *will*, (2) an accompanying state of consciousness, and (3) a manifestation of the *will*.

1. *Will*:—An "act of will" is the "physical cause by which the motive nerves are immediately stimulated"; or "that inward state, which is always succeeded by motion, while the body is in its normal condition," *i. e.*, if not paralysed.

"*Vis absolute*" is a movement, "caused by physical compulsion"; *e. g.*, when the hand of a person is forcibly moved and he is made to sign a deed involuntarily. It is no "act," as the *will* is here absent. "*Metus vis compulsiva*" and "*duress per minas*" are *acts*, where the *will* which is amenable to motives is coerced by threats; *e. g.*, a *contract* or *will* secured by undue influence. A merely *juristic* person is incapable of willing, except by a representative or by a majority of its members.

Consciousness:—The *moral* phenomena of an exertion of *will* are accompanied by *intellectual* phenomena. The result of mere *will* is a muscular movement *on* the part of the person *willing*; but some other results are also often present

to his mind ; and those among them to attain which the act is directed are said to be "*intended*" ; and wrongful acts done with intention are said to be done "maliciously." Degrees of *intellectual* phenomena vary with different persons, and at different times ; *e. g.*, lunatic, infant, woman, decreed prodigals and minors. It may be varied also by such causes, *viz.*, drunkenness or sleep ; or mistake or error.

134. *How may the "will" be manifested in order to constitute an act ?*

A. The "will" may be manifested or expressed by the party willing, and in some cases, by his agent.

135. *What is a man said to be "responsible" for ? What are meant by "**imputation**" and "deed," and how are they related to law ?*

A. A man is said to be "responsible" for an *act* in the sense of a "manifestation of conscious volition." "Imputation" implies the "attributing of responsibility," or in other words, the "judgment by which anyone is regarded as originator of an act, which then is called "deed," and is regulated by "laws."

136. *Is "**Error**" an excuse for all unlawful acts ? If not, mention those cases in which it is, and those others in which it is not, giving reasons in support of your answer.* (B. L. 1897.)

A. *Ignorance of fact* is held in law to be an *excuse.* But *ignorance of law* is no valid *excuse* ; and this is due to the fact that if it be held to be a valid excuse many persons would plead it and the Courts would be involved in every case in intricate questions, the solution of which is extremely difficult ; and hence, the administration of justice would be quite hampered and become practically impossible. In every case of such excuse, the Court will have to determine—(1) whether the person pleading it was ignorant of the law at the

time of the alleged wrong, (2) if so, was it inevitable, or he might have known it, if he had tried; and as evidence on these points are not accessible to others, it would be necessary to enquire into his whole life for a just solution; and hence, the task would be almost impracticable.

137. *Describe "Chance" and "Negligence." Shew how diligence was measured in Roman Law, and how is it measured in English Law. Define "Actionable Negligence."*

A. "*Chance*": —Sometimes, such results as are not intended follow from acts; and where they are such as could not be foreseen by the person acting, they are said to be due to "*chance*," for which no person is held liable. When they are such that the person acting could have foreseen them if he had taken more care, they are said to be due to "*negligence.*"

"*Negligence*":—Is a state of mind, which covers all those "shades of inadvertence, resulting in injury to others, which range between deliberate intention and total absence of responsible consciousness on the other." The Romans used to measure *due diligence* in *two* ways; *viz.*—(1) the diligence which a man would shew in looking after his *own* affair; (2) the diligence, which is shewn by the *average* good citizen.

In English Law, *due diligence* (or care and skill) is judged in *two* ways; *viz.*,—(1) That which is due from persons *generally* and an *ordinary person* is required to shew such diligence as in the opinion of the judge or jury an average citizen would do. (2) That which is required to be shewn by persons occupying *special* positions; *e.g*, an expert is required to shew such diligence as is expected from a specialist. A person of the former class is liable for "*culpa lata*" (gross negligence); and a person of the latter class, for "*culpa livis*" (ordinary negligence). "*Negligence*" may consist in non-performance

or inadequate performance of a legal duty. "*Actionable Negligence*" is "the omission to do what a reasonable man would do, or the doing of something which a reasonable man would not do."

138. *In order to escape liability to person or property, due care or diligence must be used. If it be enquired what is meant by the term "due" in such a case, it may be replied that it is a "diligence commensurate with the emergency, and proportionate to the power of the person called upon to exercise it." Comment upon this. Do you think intention or negligence is a necessary element in every breach of duty?* (B. L. 1899.)

A. The proposition stated above is perfectly true. The amount of diligence required to be shewn in a case depends upon *two* points, *viz.*,—(1) proportionate to the occasion, and (2) proportionate to the ability of the person who is to shew it. If the occasion be *trivial*, ordinary diligence will do; but if it be *important*, utmost diligence will be required. Again, if the person who is to shew it be an ordinary man, it will be sufficient for him if he shews such diligence as may be expected from an ordinary citizen: but if he be an expert, he will be expected to shew the skill and ability as a specialist, and will be held liable otherwise. There may be acts due to *chance*, causing breach of duty without any *intention* or *negligence*; *e. g.*, a man has a loaded gun with him for shooting birds; and somehow or other without any intention or negligence on his part it bursts out, and kills himself; or a man aims at and fires a pistol to kill a bird in a dense forest, there being no likelihood of any man being there; and it happens that a thief who was concealed there is killed. Hence "intention" or "negligence" is not a necessary element in every breach of duty.

139. *Distinguish "forbearance" from "omission,"*

"*negligence*" *from* "*heedlessness*," *and* "*heedlessness*" *from* "*rashness*." (B. L. 1894.)

A. *Omission* is a "not-doing without any intention to that effect"; but *forbearance* is a "not-doing with such intention." "*Negligence*" says Austin, "is the inadvertent omission to act as one ought. *Heedlessness* is the inadvertent acting as one ought not, while *rashness*, *timidity* or *foolhardiness* is the acting as one ought not, alluding to the effects which may follow from the act, but assuming that they will not do so in this case. Thus if I take up a rifle and shoot A, it is death due to my *intention*, if I see him and point the rifle at him expecting to kill him; it is due to my *negligence*, if I omit to make the signal, which would have prevented him from passing by the place; and it is due to *heedlessness*, if I fire without thinking it to be likely for any person to pass by the place; and *rashness*, if although I think that some person may pass by, I take the chance to be slight and disregard it."

140. *What are Holland's views on the above distinctions?*

A. Holland observes that "these distinctions are interesting but do not appear to be adopted in any system of positive law."

141. *How may "Acts" be classified. Describe a "Juristic Act" with its main features.*

A. *Acts* are divided into (1) *lawful* and (2) *unlawful*. Some lawful acts depend upon the *intention* of the doer, while others do not. The acts, in which the *intention* is directed to the juristic result, are said to be "*juristic acts*, or "acts in the law," or *acts* "the intention of which is directed to the production of a legal result;" or as "a manifestation of the *will* of a private individual directed to the origin, termination or alteration of rights;" or as " "the form in which the subjective will develop its activity in creating rights, within the limits assigned to it by law."

A Juristic Act requires all the *three* essential *elements* of an *Act*; *viz.*,—(1) exertion of will, (2) consciousness and (3) expression of will; and in accordance with their presence or absence, they may be "valid" or "void" and also "voidable."

Error or mistake affects the existence or the operation of the juristic acts. "*Error in negotio*," "*impersona*," "*in corpore*," "*spurious*" or "*negative*" are such errors, which prevent a juristic act from coming into existence on the ground that there is no correspondence between will and its expression; and Error "*in motive*," or "*genuine*," or "*positive*," are such errors, "as prevent an act from producing its legal effects."

142. *Discuss and criticize the theory that will and its expression must correspond in order to produce a Juristic Act.*

A. Savigny laid down the above *theory*, following the Roman Law; but it cannot be accepted as true, as it is in many cases impossible; and even where possible, it is not desirable to enquire into the correspondence of the *inner will* and its *external expression*.

143. *Describe some cases in which will and its expression may differ from each other.*

A. The difference may be (1) *intentional*, *e g.*, it may result from a mental reservation, or it may be the result of use of words, which produce a juristic act without any intention to that effect; *e. g.*, when legal phrases are used in jest, or on the stage, or when a phrase appropriate to a juristic act of one kind is applied to produce another, or when persons agree to give a meaning upon their act, which it does not usually bear; or (2) *unintentional*, *i e.*, due to essential mistake and therefore preventing the production of a *juristic act*. Some maintain that in enumerating the requisites of a juristic act, *will* may be left out of considera-

tion, and only its external expression may be taken into account; *e. g.*, the case of contracts.

144. *What is meant by "Form," and what is a "special" Form?*

A. It is the "*mode* in which the *will* ought to be expressed for the production of any given act" In some cases, *special forms* are necessary as in the Roman "*Stipulatio*," and in English *marriage*, *probate* of a will, and *contracts* not to be performed within a year.

145. *How may Juristic Acts be done by representation? What are the characteristics of Juristic Acts? Explain and discuss them. Define and describe Conditions.*

A. Most but not all juristic acts may be done through a representative When he is given the only authority for communicating the *will* of the principal, he is a mere "*Messenger:*" and when he is empowered to exercise an act of *will* on behalf of his principal, he is an "*Agent.*" An *agency* may be *express*. or *implied*: and it may be disclosed or not by the *agent* to third parties Agency forms an important chapter in Roman Law; and the tendency of the modern times is to recognize fully the principles laid down in Canon Law.

Division.—Juristic acts may be *one sided* (*e. g*, a Will, where the *will* of one party only is present); *two-sided*; *e. g.*, a *contract*. *Characteristics* of the *Juristic Acts* are:—(1) "*Essentialia;*" *i e.*, facts without which they cannot exist; (2) "*naturalia,*"—*i. e.*, facts which are presumed to exist but may be rebutted; and (3) *accidentalia*, *i e.*, facts which are not presumed and must therefore be proved. "*Conditions*" are the variations, which may be superadded to necessary *essentialia*; they may be varied by the *will* of the parties to an act. Some *conditions*, *e. g.*, "dies" (a future event which is certain to happen) and "*modus,*" (a direction for

the application in a certain manner of property received) affect only the operation of an act, while others affect also its existence.

Condition is said to be "*suspensive*" when the *commencement*, and *resolutory* when the *termination*, of the operation of the act, is made to depend upon its *occurrence*."

CHAPTER III.

CLASSIFICATION OF RIGHTS.

146 *Enumerate the leading classifications of Rights.*

A. They are:—

1. *Public*, or *Private* Rights having regard to the *public*, or *private* character of the persons concerned.

2. *Normal*, or *Abnormal* Rights, having regard to the *status* of the persons concerned.

3. Rights "*in personam*," or "*in rem*," having regard to the limited or unlimited extent of the *person of incidence*.

4. *Antecedent*, or *Remedial* Rights, having regard to the *act* being due for its *own sake*, or in default of another act.

147. *Define "Public and Private Person," "Public and Private Right," "Public and Private Law."*

A "*Public* Person" is "the State, or the sovereign body, or a body or individual holding delegated authority under it."

"*Private* Person" is an individual or a collection of individuals however large, who or each one of whom, is of course a unit of the State, but in no sense represents it even for a special purpose.

The Right, and Law affecting or connecting *two* private persons is called *Private* Right and *Private* Law respectively. Similarly, the Right and Law affecting or connecting a private

person and the State is called *Public* Right and *Public* Law respectively.

148. *What is the radical division of Law, and why is it so called ?*

A. The division of Law into *Public* and *Private* is of very great importance; and hence, it is called its *radical division.*

149 *What is the value of the radical division of Law ?*

A The *value* is that (1) it divides the whole field of Law (Municipal) into *two* natural parts; (2) this division is logically consistent; (3) it is convenient for arranging the important topics of Law, *viz*, Constitutional, Ecclesiastical, Criminal and Administrative Law on one side, and the Laws of Contract, Will, Succession, Tort, Real and Personal Property on another; (4) it is an old division, and is authorized by the Roman and other continental jurists.

150. *Analyze the radical division of Law, and compare between the different parts of it as regards the results.*

A. It may be analyzed as shewn here.

LAW.

Municipal. International

Public. Private.

It has been shewn before that of the *four* essential elements of Right, the *first* and the *last* are a *person.* Hence, it is that a Right, or Law connects or affects *two persons* ; *viz.*,— (1) one who is entitled, and (2) one who is obliged. It has been said before that when both of them, are *private* persons, then the Right or Law is *private* ; and when one of them is a *public* person, and another is a *private* person, the Right or Law is *public.* Now, in the case of both *Public* and *Private*

Law or Right, the arbiter is no doubt the State; but in the *former* case, it is also an interested party and can therefore be hardly said to be *impartial*; for which reason, it (Public Law) is said to be *defective* or of inferior kind. In the case of International Law, or the Law between two nations, there is no arbiter properly so called; and the only arbiter, if any, is the public opinion of the civilized world; and hence, it is no *law* in the strict sense of the term.

151. *Mention and illustrate what sort of Law applies to (1) punishing a traitor, (2) punishing a carrier for damage of goods, and (3) assault or libel on a person.*

A. (1) *Punishing a traitor*:—The State has a right that no body should conspire against it; and as the *traitor violates* 'it' the State is entitled to punish him, and to protecct itself. Hence, Public Law applies to this case.

(2) *Punishiug a carrier for damage of goods*:—Every person has a right to have his goods carried safely and without damage, when he pays for them; and if the carrier disregards the rule, he may be sued against for damage; and as both he and the carrier are private persons, Private Law will apply to this case.

(3) *Assault or Libel*:—Here the right of a person to remain unmolested is violated; and hence, the private person whose right is invaded can sue against the person invading it; and the Private Law will therefore apply. Besides, such an action also violates against the right of public peace belonging to the State; and hence, he may also be punished by the State under Public Law.

152. *How does Austin treat the division of Law into "Public" and "Private," and how is his treatment faulty?*

A. Austin assigns to this division a *secondary* position; for, he divides Law at first into (1) Law of Persons and

(2) Law of Things; and then he sub-divides Personal Law into (1) Public and (2) Private. The fault of his division is that if it be accepted, it becomes quite impossible to assign a satisfactory position to the Law of Crime.

153. *How does Austin divide Duties into "absolute" and "relative": and how does he divide "absolute duties?" What are absolute duties? Give an instance of the four kinds of duties.* (B. L. 1894.) *Shew how his divisions are faulty.*

A. Austin divides **duties** into (1) *absolute i. e.*, regarding which there is no corresponding *right*; and (2) *relative i.e.* regarding which there is a corresponding right. He divides *absolute* duties into *four* parts *viz.*, towards (1) self, (2) persons indefinitely, (3) the sovereign, (4) God. It is therefore clear that according to him, the State has no rights and duties; but the truth is otherwise. See q. No. 122.

154. *Describe what is the second division of Rights, based upon status; and how is Law accordingly divided.*

A *Rights* may be divided into *two* classes, having regard to *status*; *viz*,—(1) those, in which the status of the persons concerned requires to be specially considered; (2) those in which it is not the case. The above distinction has led to the division of Law into (1) Persons, and (2) Things.

155. *Shew how the above division is consistent with the definition of "Right."*

A. It has been shewn before that a "Right" requires *four* essential elements; and as the *first* and *last* of them refer to *persons, viz*, person entitled to and person obliged, they may be classed as one element; and the *third* and *fourth* terms *viz*, object, and act, referring to things may be classed into one element. Hence, there become *two* elements; *viz.*, person and thing; and Law may therefore be divided into (1) Law of Persons, and (2) Law of Things.

156. *Shew how the above division was sanctioned by the Roman jurists, and how they have been followed by the other jurists.*

A. The Romans divided Law into (1) "*Jus quod at persona pertinet,*" "*Jus personarum,*" and (2) "*Jus quod ad res pertinet*" or "*Jus rerum.*" These expressions imply the same things as "Law of Persons" and "Law of Things" respectively. Mathew Hale first divided *Law* into Law of Persons, and Law of Things, following the above expressions ; and he was followed by Blackstone. Other Jurists who have not accepted the above division have divided Law in a similar way The "General" and "Particular" Law of Bentham, the "Capables" and "Incapables" of Blondeau, and the "Equals" and "Unequals" of Mr. Poste amount to similar divisions ; and the division of Law by Westlake depending upon "Status" is also a similar division.

157. *What are the objections against the above division? What sort of division is proposed by Holland, and how does it suit the purpose?*

A The objections against the above divisions are—(1) The terms used in them are all ambiguous, and hence, open to objection ; (2) they do not enable one to draw properly the line of demarcation between the *two* divisions.

Holland proposes to divide Rights into—(1) *Normal* and (2) *Abornal,* instead of accepting the above divisions ; and his grounds are as follow :—(1) A Right varies as one or other of the *four* elements of it varies ; but the possible variations of the *two extreme* terms is less than the same of the *two intermediate* terms ; and this is due to the fact that (1) both the extreme terms refer to *persons* who are liable to same variations, and (2) a *juristic person* is in fact less variable than a *juristic thing* or *act.*

158. *Shew how the aggregate of rights may be likened to a figure of two demensions.* A. See Table V. App. B.

159. *Describe what should be the order of exposition of Jurisprudence or of a body of Law.*

A. The order of exposition should be (1) the Law generally, without regard to peculiarities of personality; (2) the Law of Persons; (3) the Law of Things.

160. *What is the true test for drawing a line between the Law of Things and the Law of Person? Shew how the tests proposed by Austin and others are faulty.*

A. The true *test* for drawing the *line* of *demarcation* is "whether the peculiarity of the personality does arise from anything unconnected with the nature of the act itself which the person of inherence can enforce against the person of incidence." The personality which is recognized in the Law of Persons is of such a nature that it alters indefinitely the legal relations of the person of inherence; *e. g*, a landlord has no peculiarity apart from the acts which he can enforce against the person of incidence; *viz.*, payment of rent &c.; but if he be an "*infant*," his rights are altered in many ways; hence, the law with regard to landlords cannot be considered under the Law of Persons.

Austin divides *status* or *marks* into *three* classes *viz.*,—(1) residing in a *person* as a *member of a class*, and (2) residing in the class, (3) residing in the *person*. But these *marks* are not sufficiently distinctive; for, they will be found in *infants* and *lunatics*, to whom a special *status* is assigned, as also in landlords and stock brokers, who as members of a class have no peculiar *status*.

It has been suggested that the *essential feature* of a *status* is such that it cannot be varied by contract by any member of the class to which it belongs. But this even is not sufficient.

161. *What are the affections of Personality?*

A. (1) A person may be *artificial*, *i e*, not a real human being.

(2) He may be "under disability" or may enjoy exemption on account of age, sex, mental incapacity, crime, alienage, or public station.

162. *Shew how the Law of Persons and of Things may be distinguished in Private, Public and International Law.*

A. In Private Law, the Law of Persons, is a description of the ways in which the general law is altered by varieties of *status*; and the law of Things is a description of the different kinds of rights which are enjoyed by private persons as subjects of a State, and not as representing the Sovereign. In Public Law, the *former* is a description of the State as a whole, of its ruling body, of persons and bodies having delegated power &c *i e.* the Constitutional law; on the other hand, the Administrative law, and the Criminal law may be described as the law of Things. In International Law, the Law of Persons may be described as a portion of it which deals with the characteristic of a fully Sovereign State, and the modes in which the same are affected.

163. *What is the Third division of Rights based upon the extent of the person of incidence?*

A. *Rights* are thus divided into—(1) Right in *personam*, and (2) Right *in rem*. A *Right* is available either (1) against a *particular* person or persons, or (2) against all persons of the world. The *former* kind of Right is called Right *in personam*; and the *latter*, Right *in rem*

A servant has a *right* against his *master* only for his wages; and it is called right *in personam*; but an owner of a plot of land has a *right* against *all persons* of the world; and it is called a right *in rem*. Right *in personam* is

described in Roman Law as *jus in personam* or *jus in re*; and similarly Right *in rem* is called *jus in rem* or *jus ad rem*. Similar divisions are also made into (1) statuta personalia, and (2) statuta realia; or (1) "personal" law, and (2) "relative" law.

164 *Distinguish between "rights in rem" and "right in personam."* (B L. 1898.)

A. A right "*in personam*" implies a *right* available against a *definite* individual, a Right "*in rem*" implies a right which is capable of exercise over its object, "in rem," *i. e.*, against the world at large, without reference to any one person more than another.

165. *Describe the "fourth" and last division of Rights? What are the other existing terms for them?*

A. *Right* is divided into (1) rights, "where the act is due for its own sake;" (2) *rights* where the act is due merely on default of another act. The *first* class is also called "*primary*," "*sanctioned*" and *of enjoyment*;" and the "*second* class is similarly called "*secondary*," *restitutory*" and "of *redress*" by many persons.

166. *Explain the terms "Antecedent rights" and "Remedial rights" as used by Prof Holland!* (B. L. 1898.)

A. Holland means by "*Antecedent* rights" such rights as "exist before any wrongful action or omission;" and by (2) "*Remedial* rights," such rights which "are given merely in substitution or compensation for rights *antecedent*, the exercise of which has been impeded, or which have turned out not to be available."

A servant has a *right* to get his wages from his master; and it is called "*antecedent*" right, as it exists before any wrongful act or omission on the part of the master; but if the master does not pay wages in due time, he commits a

wrongful omission, for which the servant acquires the *remedial* right of suing against him.

167. *What are the other features of comparison between "Antecedent" and "Remedial" Rights ?*

A. *Remedial* rights are given by way of *remedy* or *restitution*, or *compensation* for "*antecedent rights.*" If everything goes on smoothly and nobody violates any right (antecedent), there is no need for "remedial" right. Law is said to be as "added because of transgressions."

168. *What are the main divisions of Law arising from the above divisions of Rights?*

A. *Five* chief *divisions* of Law arise from the above divisions of Rights :—(1) *Substantive* and *Adjective* Law :—(2) Public, Private and International Law. (3) Normal and Abnormal Law. (4 Law of Rights *in rem*, and Law of Rights *in personam.* (5) Law of Antecedent Rights and Law of Remedial Rights.

169. *How is Law divided having regard to the political quality of the persons concerned? What is the primary division of Law ?*

A. Law is divided into (1) Private, (2) Public and (3) International, having regard to the distribution between the political or non-political quality of the persons with whom they are connected. Such division of Law is said to be its *primary division.*

CHAPTER X.

RIGHTS AT REST AND IN MOTION.

170. *What do you understand by Rights "at rest" and "in motion ?"*

A. *Rights "at rest"* refer to the "nature or scope"

of Rights; and *Rights "in motion,"* to "the causes, which connect or disconnect Rights with *Persons*;" or the causes, which originate or terminate their connection with the *Persons* in whom they reside

171. *A right which is at rest requires to be studied with reference to its "orbit" and its "infringement." Explain.* (B. L. 1896.)

A In order to know the *nature* of a right, it is necessary to know its *"orbit,"* and its *"infringement." "Orbit"* of a right implies "the sum or extent of the advantages which are conferred by its enjoyment;" and *"Infringement"* of a right implies "an act which interferes with those advantages." The *nature* of a right is often known by a knowledge of the acts, which are its "violations" "Orbit" and "infringement" are correlative terms; and the knowledge of one implies the knowledge of the other. To know fully the advantages conferred by a right is to know what acts are its infringements.

Some rights are not capable of exact definitions; but their violations are well known; hence, it becomes necessary to study the "orbit" and also the "infringements" of a right in order to know it properly.

172. *Enumerate the circumstances when "Infringement" does not take place.*

A. It does not take place—1) when it is "really the result of circumstances over which the apparent agent had no control; (2) when "it is not the true cause of the damage complained of;" (3) when the right, alleged to be infringed, has been waived, or forfeited, or disallowed on public grounds.

173 *Illustrate the aforesaid grounds; and state the law with regard to them, with remarks, if any?*

A. An instance of the *first* case will be found when the horse of a carriage getting frightened by a noise

runs furiously and does some damage in such way that it could not be checked by the driver.

An instance of the *second* case is found, when a squib is thrown by *A* at *B*; and *B*, to get rid of it, throws it at *C*, and it is thus passed on till it ultimately hits and injures *P*

In such a case, *A* is held liable on the ground that he "who does the first *wrong* is liable," all that is done subsequently to the original throwing being a continuation of the *first force* and *first act*, which will continue till the squib is spent by bursting; and any innocent person removing the danger from himself to another is justifiable Sm L C 399 —Scott *v* Shepherd. But it may be remarked against the above decision that the Law does not hold the "too remote cause," or to which the injured party has contributed by his negligence as liable

174. *What is the rule of English Law on the remoteness of cause of a wrong?*

A. The rule is that the wrong and damage must be "concatenated as cause and effect" Lord Ellenborough held in Vikars *v* Wilcox, 8 East. 3—that in a case of special damage, it must be the "legal as well as the natural consequence of the act complained of"

But see—Knight. *v.* Gibbs, 1. Ad and E. 46. } in which
Lynch. *v.* Knight, 9. H. L. C. 577. }

the correctness of the above decision was much doubted.

175. (*a*) *What is Contributory Negligence?* (B. L 1881.)

A It is such negligence as contributes to one's own injury by being a "co-operative cause" of it When the cattle of a person stray on the railway line and are injured, he is said to have contributed to the injury, if he did not negligently get the gates shut up; but negligence is not held to be "Contributory," when the injury could be

avoided by the "ordinary care of the wrong-doer." The Contributory Negligence of a third party does not excuse a defendant who is negligent; but there are *two* exceptions; *viz*,—(1) when the cause of action is derived from a negligent third party, *e. g.*, a parent or guardian suing for injury to a child caused by its own carelessness; and (2) when plaintiff identified himself with the negligent third party: *e. g*, when the driver of a carriage doing some injury is the defendant; and the passenger of another carriage (whose driver by his negligence contributed to the said injury) is the plantiff. But this *second* exception is no longer law in England.

In Admiralty cases, the law is to apportion the liability between the plaintiff and the defendant in cases of Contributory Negligence; but in all other cases, the plea of Contributory Negligence by defendant, if proved, is fatal to plaintiff's claim.

176. *Describe "Waiver," "Leave and License," "Forfeiture," 'Public Policy," and "Responsibility" as affecting Rights.*

A. *Waiver*:—When a right is waived, an act otherwise illegal becomes legal. *Leave and License* is a sufficient plea for defence in cases of trespass and breach for covenant. The consent of the husband is a sufficient plea in a case of criminal conversation. The "Waiver" must be however given freely, and with knowledge of the circumstances. *Forfeiture*:—when a right is forfeited, an act otherwise illegal becomes legal; *e. g.*, an assault is not actionable when it is shewn that it followed a forcible entry into defendant's house and refusal on the part of the plaintiff to vacate it. *Public Policy*:—A right may also be suspended on grounds of public policy; *e. g.*, trespass on another's land which adjoins to a highway is not

actionable, when the highway becomes impassable. *Responsibility*:—The responsibility for an infringement does not always attach exclusively to the visible wrong-doer. A person is liable for such acts of his servants or agents as were expressly authorized by him, or were done in the course of their common duties.

RIGHTS IN MOTION.

177. *Describe what you know of the Rights in motion?*

A. The origin, transfer and extinction of rights, or the connection and disconnection of them with persons, are due to *two* kinds of fact; *viz*,—(1) Event, and (2) Act. A *fact* giving rise to a right is a "title"; but there are no good terms to express the ideas of transfer and extinction. Hence Bentham divided *facts* into—(1) *investitive*, *i. e.*, originating rights; (2) *divestitive*, *i. e.*, extinguishing rights; (3) *translative*, *i. e*, transferring rights, or originating right of one and extinguishing right of another; and (4) *dispositive*, *i. e.*, including and implying all facts.

2. An *investitive fact* may be—(1) a direct act of the Sovereign power as when a privilege or monopoly is granted; or (2) a fact which brings a particular case within general law (*e g.*, death of a person devolving succession on another) which is called also "*qualification*, *i. e.*, the substitution by the course of events of a definite individual instead of an uncertain person as the person entitled to a right

3. A *divestitive fact* is a fact which puts an end to one's rights.

Translative facts may be—(1) "Voluntary" act of party, *e. g.*, will, contract, sale; and (2) "involuntary" act of law, *e. g.*, bankruptcy, escheat, adjudication, death, &c. They may operate *intervivos* or after death; but the right can not be greater than what it was before transfer.

178. *How would you define "Succession?" Distinguish between "Singular" and "Universal" Succession, and "Testamentary" and "Intestate" Succession.*

A. It is a translative fact by which the very right itself passes from one person to another. When one or more separate rights pass by Succession, *e. g*, lease right in a house, or ownership of an estate, it is said to be "Singular" Succession; and when the whole mass of a man's rights and duties as well as assets pass by it, it is called "Universal Succession;" *e. g.*, succession of an executor, administrator, or trustee in bankruptcy. It is "Intestate" when it is due to death of the owner, and "Testamentary" when it is due to a *Will* executed by him.

179. *Explain the term Universitas Juris. Give instances of Universal Succession in primitive Roman Law.* (B. L. 1898.)

A. The term *Universitas Juris* implies Universal Succession. Inheritance occurring at death, confiscation to the State, succession of an assignee to the estate of a bankrupt, and the succession of a Roman citizen, adopting a child, to the estate of the child may be cited as instances of Universal Succession in primitive Roman Law. Some other forms as *bonorum venditio* &c. have become obsolete

180. *The notion of a Universal Succession is much obscured in the English system. Explain.* (B. L. 1896)

A. In English Law, no one individual succeeds to all the properties of an instestate leaving both real and personal property; and the heir and the administrator divide between them what devolved wholly upon the heir in Roman Law. Hence, it is said that the notion of a Universal Succession is much obscured in English Law.

181. *What is the most important of all Universal Successions and how may it be brought about?*

A. The passage of the rights of a deceased person to his heirs is the most important of all Universal Successions, and it may be brought about either by an involuntary act, *i. e.*, death intestate, or by a voluntary act, *i. e.* execution of a Will.

182. *What is a Will?*

A. The disposal by a person of his properties during his life-time to take place after his death is called a *Will.* It is what a man "legally wills to be done after his death regarding his property."

183. *Trace the history of the legal conception of a Will.* (B. L. 1882.)

A. Originally in Rome soldiers only were allowed to dispose of their properties orally according to their *will* in the face of the people drawn up in battle array. Wills were then neither secret not revocable. Subsequently, the general people were allowed the privilege of disposal of properties by written deeds and the church was the custodian of Wills; but it was necessary at first to obtain sanction of the legislative authority if the relatives and heirs were meant to be ousted. Latterly, wide liberty was enjoyed without any such restriction. Wills were freely allowed in England during the Anglo-Saxon period; but they were restrained under the *feudal* system, and again revived with the introduction of Uses. The land was conveyed to the feoffee to uses, who at common law was the absolute owner. Then the *Uses* were declared in Wills, and the Court of Chancery compelled the feoffees to carry out the intentions. The New Wills Act—Will IV. and Vic. 26 with 15 and 16 Vic. C. 24, now governs in England all questions with regard to Wills. In India, the idea of a *Will* is an innovation in the case of Hindus.

184. *Give a sketch of the early history of testamentary*

succession and shew how by adopting the historical method theory about its early origin is falsified. (B. L. 1891)

A. The historical method of enquiry has established that the idea of individual ownership, which is the basis of making a Will is of later origin; and that originally properties belonged to family groups, and each individual was merely to administer his share of it during his lifetime. When a man died, his surviving children and nearest kinsmen who were about him succeeded to the properties previously enjoyed by him; as he had never any exclusive right to any property so that he could dispose of it as he liked, execution of wills was quite out of question. Hence, it is clear that the historical method falsifies the early origin of Wills.

185. *What are the important points in the study of Law of Will?*

A. (1) Power to make a *Will*, (2) Formalities necessary for signing, attestation &c. (3) Contents of Will, (4) Effect of mistake and undue influence on it, (5) Capacity of the heir, trustee &c., to take under the Will, (6) When a valid Will may become invalid, (7) Whether any *Probate* is necessary, (8) Power of the heir, executor, &c. to accept or refuse a Will.

186. *Describe the position of an English Executor.*

A. Though an English Executor does not take the whole property of the deceased testator leaving real and personal property, yet he is regarded as a *Universal Successor* so far as the personal property and the claims upon it are considered.

187. *Define "Legacy;" and describe the important points with regard to it.*

A. A "Legacy" is "a deduction from an inheritance for the benefit of some one. It is the creation of a claim upon the Universal Successor." A distinction is made between the *vesting of a legacy*, and its *becoming payable.* It

may be revoked by the testator or it may "lapse." It becomes void when it is inconsistent with any rule of law.—(1) as to the amount of legacies, or (2) as to the proportion which legacies may bear with the property which is to remain with the heir, or (3) as to the person who may receive it.

188. *Distinguish a "Legacy" from a "Donatio mortis causa."*

A Both "Legacy" and "Donatio mortis causa" are gifts given by a man to take effect after his death. But the *first* is a deduction from the inheritance, while the latter is not so A "Legacy" may be provided in a *Will* long before a man's death, but a "Donatio mortis Causa' is a gift in contemplation of death.

CHAPTER XI.

PRIVATE LAW: RIGHTS "IN REM."

189 *Shew how Rights "in rem" are related to the subject of Law*

A See Table VI., App. B

190. *Explain what is meant by Normal Antecedent Rights "in rem"*

A They are those rights "which irrespectively of any wrong having been committed are available for the benefit of the person of inherence against a person of incidence so unlimited as to comprise the whole world."

191. *How and by what other terms are Rights also divided; and why are those divisions not useful?*

A. Rights "which every human being possesses independently of any act of his own," are called "*inborn*," "*fundamental*," "*inalienable*," "*natural*," "*immediate*," "*uni-*

-versal," "*essential*," "*unconditional*" and "*absolute*," as opposed to "*Rights*," which are the result of some free act of the person entitled to them,—and which are called as "*derivative*," "*mediate*," "*alienable*," "*accidental*," and "*hypothetical*." These divisions are not *useful* as the "line between the two classes is variously drawn and must always be drawn subject to so many qualifications and reservations"

192. *Enumerate the Normal Antecedent Rights "in rem" having regard to the intimacy of their relation with the person of incidence? Give a classification of the Antecedent Rights "in rem."* (B. L. 1898.)

A. They may be enumerated as follow :—

I. Rights to personal safety and freedom ;

II. Rights to the society and control of one's family and dependants ;

III. Rights to reputation ;

IV. Rights to advantages open to the community generally such as the free exercise of one's calling ;

V. Rights to possession and ownership ;

VI. Rights to immunity from damage by fraud.

193. *Describe the aforesaid I. class of Antecedent Rights "in rem" with their main features.*

A. I. Rights to *personal safety and freedom*—are *acquired* by *birth*, and are therefore said to be "innate," though they are limited in the case of *minors* and *women* by the rights of *parents* and *guardians* for custody and chatisement. They are by nature *inalienable*, but may be waived partially *e. g.*,—the person engaging in a duel waives the right of not being assaulted), or wholly (as a self-sale into slavery or selfish dedication to monkish seclusion), or forfeited temporarily as in the case of a plea of justification ; and they terminate with death.

These Rights may be enumerated as follow:—

(1) "*Menace*":—Every man has a right not to be menaced by *gestures*; *e. g*, by the shaking of a fist, the brandishing of a stick, or the presenting of a pistol. These acts are not wrongful, when contact is not possible on account of distance or when words are used, implying that no harm is meant (*e.g.*,—if it were not Mohorrum I would not take such language from you.)

(2) "*Assault*":—Every man has a *right* not to be touched, pushed, or struck in a rude or hostile way, thus sustaining a "battery" in English Law. But to push one's way gently in a crowd, to touch a neighbour to call his attention, or to give him a jocular and friendly blow or to execute a legal process are not wrongful.

(3) "*Wounding*":—Every person has a *right* not to be wounded or disabled by any body whether by deliberate assault or negligence.

(4) "*Imprisonment*":—Every person has a *right* to go where he pleases if he does not interfere with the rights of others; to prevent him from doing so by act or word is wrongful.

(5) "*Dangerous things*":—Every person has a right not to receive any injury from any dangerous thing or animal kept by another; to violate any such right is wrongful when it causes damage, though greatest care was taken.

(6) "*Dangerous places*":—Every person has a right not to have his personal safety injured by the acts of others; *e.g.*,—to keep a house in such bad order that it falls on a passer by, or keep a dangerous place, which causes injury to persons having lawful business there are wrongful.

194. *Criticize the expression "a man has a right not to be killed?"*

A. As a man has a right not to receive personal injury, it might be supposed that he has *a fortiori* a right not to be killed ; but antecedent right cannot be said to exist unless its violation creates any remedial right ; and as in such a case, the right, if any, which arises by the act of killing terminates with death, or as soon as it is vested, it cannot be said that a man has a right not to be killed.

195 *Describe the aforesaid II. Class of Antecedent Rights "in rem" with their main features.*

A The II. Class of such rights includes,—(1) the *Family rights "in rem,"* (as opposed to Family rights "in personam," *i. e.*, rights which a member of a family may have against its other members) which *result* from *marriage*, and relate to right of husband or wife as against the world, so that no other man shall by force or persuasion deprive him or her of his consort's society or have criminal intercourse with him or her; such right is inalienable, and incapable of waiver &c, and *terminates* with *death* or *divorce.*

History of the Institution of Marriage :—In early society, it consisted "in the forcible capture of the woman by the man " Later on, it became a symbolical ceremony following on a voluntary sale or gift of the woman by her relatives to the man." The modern form is "a mutual and voluntary conveyance or dedication of the one to the other ;" it is generally associated with some religious observance, and is valid when performed in presence of the recognized State officials. Polygamy, *i.e.*, polygynaiky—or polyandry and bigamy exist in many countries ; but the modern tendency is towards monogamy. In Egypt, woman was formerly taken on probation for one year, after which marriage used to take place. There are traces of *marriage* for a definite period in some legal systems.

"*Divorce*"—is not at all allowed by some nations, who

consider marriage to be a sacrament, and an indissoluble tie. The Romans allowed it at the option of the either party.

Offences against Marriage are—(1) abduction, or harbouring of or criminal intimacy, or injury. The adulterer, known as co-respondent in England, is not liable if he was *unware* of the *marriage* of the woman.

(2) "*Parental right*" is the *right* to the custody and control of children and to the produce of their labour until majority. It arises with *birth* of the child, and terminates with (his or his father's) *death*, *marriage*, *majority*, and by judicial sentence. It is alienable by adoption *Offences* against the right are *acts*, which affect the parents' control over his children, or the advantage which he derives from their services

(3) "*Tutelary right*" is the right of a tutor or guardian It is an artificial extention of the parental right. It is given not for the tutor's benefit, but for that of the pupil or ward. It may be acquired by *will*, or *deed* or *judical act* &c., and is lost by *death*, *marriage*, *majority*, *resignation* or *removal*.

Offences against it are *acts of interference* with the control over the person or property of the pupil or ward

(4) "*Dominical right*" is the right of a master over his slave, which was in early days quite alike his right over his cattle. It was also acquired, lost and transferred in the same way, except this that a slave was capable of being manumitted. A master can sue any one who kills the slave or entices him away or renders him incapable of doing his duties. Similar *rights*, which arise from contract, are rights to *domestic service*, and also to any kind of employment; and the principles with regard to them are that a person who induces a party to a contract to break it, intending thereby to injure the other party, or to get a benefit from it, himself does an actionable wrong.

196 *Describe the aforesaid III. - Class of Antecedent Rights "in rem" with their main features.*

A. *Reputation*:—A man has a *right*, as against the world, to his *good name*; *i e.*, a right that the respect, so far as it is well-founded, which others feel for him shall not be diminished; and it has *two exceptions*—(1) when the imputation is *trivial*, and (2) when it is *truthful*. It is *innate* (*i e.*, common to all men), and lasts till *death*

Offence, against reputation, may consist in *words*, spoken or written; and also in *gestures* or *pictures*. It may be "*direct*," when disparaging the man himself; and "*indirect*," when disparaging his family or belongings. *Publication* is essential in this case: and hence, any imputation in a letter addressed to the man himself, or uttered by words when no one else is present are not wrong. Wrong intention must be present in order to constitute the offence.

A man's right to good name is a right availing against all persons generally, and is therefore *Jus in rem*.

197. *Describe the grades of "Defamation" as recognized by the English Law.*

A. They are as follow:—

(1) Some statements are *defamatory*, irrespective of their publication or consequences; *e. g*, to charge one with indictable offence, ignorance of his profession, or insolvency in trade

(2) Some statements are *defamatory*, only if put into a permanent form, *i e*, when they are written, printed or suggested by pictures, and are called "*Libel*."

(3) Some statements are *wrongful*, if special or temporal loss results from them. To speak of a man as a scoundrel, cheat &c., is *not offence* unless *actual* damage has taken place. But to speak of a woman as *unchaste* is now a *wrongful* act.

198. *Distinguish between (a) Jus in rem, (b) Jus ad rem, (c) Jus in personam. Give an illustration of each. Under which of the above heads would you classify a man's right or interest in his good name and why?* (B. L. 1895.)

A. *(a) Jus in rem* is a right availing against persons generally; *e. g.*, right of father or guardian, over child, or ward to custody and education, and of master over servant to services without molestation by others.

(c) Jus ad rem is any right which avails against a person certain It is also used to a species of such rights.

(c) Jus in personam is a right availing against a person certain or determinate; *e g.*, if a son or ward refuse the lessons of a teacher whom the father or guardian has appointed, he may be compelled to return, and be also punished moderately. A man's right to good name is a right availing against all persons generally, and is therefore *Jus in rem*.

199 *How and when is "Defamation" justifiable?*

A. The most important mode of justifying a Defamation is when it is "*privileged*": *e. g*, done in public capacity as a judge, advocate, or witness; or when the circumstances are of a certain class; *e.g.*, a character is given to a servant, the presumption of malice is then rebutted, and the plaintiff is required to prove actual malice. If, however, this can be proved, or if the statement was carelessly so made as to reach others than those whom it might properly be addressed, the plea of privilege is of no avail. Fair reports of trials, debates, meetings, fair comments of public men or of literary or artistic works are privileged.

200 *Describe the aforesaid IV. Class of Rights "in rem" with their main features.*

A. To exercise *ordinary rights* is to perform all acts and to enjoy all privileges as a citizen without any molestation. This

class of right is vague and wider than the previous *three classes* ; and it includes—(1) the *right* to the unmolested pursuit of the occupation by which a man earns his livelihood ; a man does wrong when he hinders another in his trade.

(2) Right to the free and unobstructed use of the public highways and navigable rivers, to block up a road and thus to compel a stranger to pass by a longer way, to drive a carriage in such way as to hinder the progress of another, to build a house in such away as to intrude upon the highway are violations of this right ; (3) right not to have the Court maliciously set against him, malicious arrest, malicious prosecution, malicious proceedings to cause a bankruptcy, abuse of a writ of execution, and maintenance (assistance rendered in a suit by a stranger to it without lawful excuse) are violations of this right, a prosecution, though originally *bona fide* may become afterwards malicious, if the prosecutor knowing the plaintiff to be innocent still perseveres "malo animo" in the proceeding.

201. *Describe the aforesaid V. Class of Rights "in rem" with their main features.*

A. Rights to **Possession** and **Ownership,** or *Proprietory Rights*

Nature of these Rights (as distinguished from the previous classes of rights) :—These Rights relate to tangible external objects, unlike many of the previous rights ; *e g.*, one's good name my be considered as "airy nothing") and are extensions of the power of a person over portions of the physical world," or are such as "have an extension of the advantages, which a man has when a physical object is actually within his grasp." Like previous *Rights*, they are available by means of the acts or forbearances of the person of incidence ; but such acts or forbearances relate to an object or thing, from which the person of inherence derives some advantages.

The Essence of these Rights lies "not so much in the enjoy ment of the thing as in the legal power of excluding others from interfering with such enjoyment."

Appropriation :—Every portion of the material world is not capable of appropriation : *e. g.*, the air, the sea and the water of rivers are for the common use of all men, but belong to none.

"*Jus possidendi*" and "*Jus possessionis*"

"The right of the owner to possess is technically called "*Jus possidendi*" and "the right of the possessor to continue to possess is called "*Jus possessionis.*"

202. *What are the essential elements of legal Possession? A owns a plot of land accessible only by a bridge across a stream. The bridge is swept away by flood. Does A thereby lose his possession of the plot? State reasons for your answer.* (B. L. 1898.)

A. The *elements* of *Possession* are :—

(1) "Some actual power over the object possessed," called *corpus*" in the Roman law — *a*) Actual contact with the thing is not necessary. (*b* Full physical control is not necessary; but it is necessary to have power to exclude others. (2) "Some amount of *will* to avail oneself of that power," called *animus* in Roman law; and this may be of *three* kinds; *viz* —(1) idea of simple protecion —*e.g.*, that of a servant, (2) idea of use in different ways, and (3) idea of exclusive right ; *e.g*, that of a thief.

A does not lose possession as he has power to exercise control, though not in actual contact.

"*Corpus*" :—When a person is said to be in possession of an object, he must 'have it so far under his control as to be able, unless overpowered by violence, to exclude others from its enjoyment," though he need not necessarily "be in actual

control with it"; *e.g.*, he comes into possession of (1) wheat stored in a warehouse, when he is given its key, (2) an estate as donee "by entering upon any one portion of it" or by having the land shewn to him from a neighbouring place; such possession is called *symbolical* as the key, in the case of wheat, is a mere symbol of the contents of the warehouse, and also "*fictitious*" as it does not consist in actual contact with the object. Similarly he comes into possession of (3) goods when they are delivered at his house, though no one has touched them on his behalf, (4) treasure or other object buried in his land, when he digs it up, (5) of a wild animal or bird, which he has shot, when he actually catches it as he has then only powers "to exclude others from the object being interfered with"

"*Animus*":—The power of *physical control* is not the only thing necessary to constitute *Possession*; but there must be a *will* to exercise such control at least for the commencement of *Possession.* This *will* or *mental element* has *three* degrees; *viz.*, (1) when it exists, not for *asserting* the right of the *possessor*, but for *protecting the subject against violence*; *e.g.*, the *possession* of a servant, which is fitly described as "representative"; (2) when it exists for exercising control over it, subject to the rights of the real owner; *e.g.*, the *possession* of the *carrier*, *borrower*, *lessee* of land, and *usufructuary*; (3) when it exists for asserting the *sole rights* of the *possessor* and denying the rights of all other men.

203 *Describe the Roman theory of Possession as shewn by Savigny and describe the names of the elements of it.*

A. Savigny states that the Romans recognized *two* degrees of *control* over an object; and the said degrees were distinguished by the "intention of the possessor." The *lower degree* of *intention* exists, when the power to dispose of the

object is limited by the rights of another person (owner); *e.g.*, the *possession* of slave, servant, usufructuary, bailee. The *higher degree* of *intention* exists when the holder or possessor "believes himself to be the rightful owner of the object, or having merely found it, means to keep it subject to the possibility of the owner making his appearance, or having stolen it, means to keep it against all comers." That kind of *Possession* in which the intention was of higher degree was alone protected by the *Interdicts* and was called "Possession," the other class of possession which is now called "detention" was called "*in possession esse.*" *Intention* in the case of "*Possession*" is called "*animus domini*," or *animus possidendi*."

204. *What is the objection against Savigny's theory and how does he indirectly try to meet it?*

A. His *theory* does not account for the fact that the Interdicts were also accorded to the "*Emphyteuta*," the *pledge holder*," the "*precario tenens*," and the "*sequester*," to none of whom can the "*animus domini*" be attributed. He stated, however, that for practical reasons "*derivative*" possession was admitted in these cases.

205 *Describe how does Ihering attack Savigny's view. What is his own theory and what are its faults?*

A. Ihering attacks Savigny's *theory* on the grounds that—

(*a*) The necessity of *actual control* cannot be discovered in the works of the Roman jurists without doing violence to their language.

(*b*) The amount of control demanded by Roman Law varied, as it reasonably should vary, according to the nature of the object in question.

2. Ihering's *theory* is—"that the difference between *Detention* and *Interdict possession* has nothing to do with the *will*; that whoever so far exerts his *will* over an object as to obtain

detention of it, *possesses* it for all purposes, except in so far as possession is denied to him by some special *rule of law*."

3. The *faults* of Ihering's *theory* are as follow:—*viz.*, he appears (1) to be in conflict with clear statements in the sources, (2) to maintain an *anachronism*, and (3) to be inconsistent with his own maturer views, and (4) just as Savigny allowed fictitious "*derivative*" possession in the case of the pledge-holders and others, who would not otherwise on principle be possessors, so *Ihering* allowed 'a *number* of *special rules of* Law in order to explain why borrowers, lessees and the like, who would *primafacie* be entitled to *possessory remedies*, are not really allowed the same.

206 *What are the Teutonic and the English theories of Possession?*

A. *Teutonic theory of Possession*: —The *Jurists* of the Teutonic races do not recognize *two* grades of *Possession*; and they do allow *possessory remedies* even to those persons, who would not be protected by the *Interdicts* of the Roman Law.

English theory of Possession:—The *English theory* of Possession is similar to the *Teutonic theory*. It does not, indeed, grant *possessory remedies* to the servants; but with this exception, it makes no distinction between "*Detention*" and "*Possession*," and grants *possessory remedies* to all occupants of land, and holders of goods.

The tenant of a farm, who was previously "a mere bailiff for the landlord" alone can now sue for *trespass*: and so the bailee.

207. *How is "wrongful possession" viewed in English and Roman Law?*

A Both in English and Roman Law, "a mere finder, or wrongful taker has a possession, which will be protected against

a stranger: and the stranger can have a superior right only when he can shew that he was acting under the authority of the person having right.

208. *What is "Possessio Plurium," and how does it obtain in the different systems of Law?*

A. (1) "*Possessio Plurium*" implies the fact of more persons than one being in possession at the same time. The principle in Roman law is that "only one person can posses the same object at the same time;" but in English, as also in German Law, more persons than one can sometimes possess the same object at the same time.

(2) In England, when the tenant farmer acquired the *writ of ejectment*, his landlord also retained his possessory remedies, and previously the bailors as well as the bailees could sue for trespass. In modern times the landlord can not bring trespass during the continuance of the tenant's term; and in the case of *simple bailments*, *i.e*, "those in which the bailor may resume possession at any moment,' the bailee alone can sue for trespass; but not so in the case of other bailments.

209 *What are the reasons for which Possession receives protection!* (B L 1897.)

A. The *preservation* of *peace* is probably a reason for the purpose. Some writers declare "that *possession was protected as possessors are in most cases rightful owners*; but this declaration is hardly in accordance with legal history."

210. *What according to Savigny and Markby are the two elements in the legal conception of Possession? Is there anything fictitious, symbolical, or constructive in our conception of the possession of goods bought, when the seller hands over to the buyer the keys of the warehouse in which they are stored?* (C. U. B. L. Ex. for 1894.)

A The *two* elements are (1) some actual *control* over the

thing possessed, and (2) *intention* or *will* to exercise that control. The delivery of the key of the warehouse is a complete mode of delivery of possession as it is a way of obtaining possession and making use of the thing; and it is neither fictitious, symbolical nor constructive.

211 *What place should the doctrine of possession occupy in a code of Law?* (B. L. 1897.)

A *Savigny* was of opinion that it belongs to the department "*obligationes ex delicto,*" as it "only comes in question as a condition to the granting of *Interdicts.*" But Holland, following Alciatus, Hahn, and Gans classes it among the "*Jura in re.*"

212. *What are the conditions necessary for "Representative" possession? Show that a master's possession through his servant, or an infant's possession through his guardian is a real possession.*

A The conditions necessary for representative possession are:—(1) The representative must have physical control over the thing; (2) he must intend to exercise it for his principal, and (3) the principal must assent to such exercise.

When a servant has got a thing in his control, he is to exercise it for his master, and hence, the master is in real possession. In the case of an infant, his mental deficiency is supplied by his guardian; and hence, if the said guardian comes to have control over a thing and exercises it for the ward, the latter is said to be in possession.

213. *Explain briefly the doctrine of representative possession as applied to persons labouring under incapacity. What do you understand by a transfer of detention without possession?* (B. L. 1895.)

A It is said by some writers that persons labouring under mental incapacity, *e. g.*, minors and lunatics, can never have

possession of anything as they are wanting in the *second* element of possession; *viz.*, *will* or *intention* to exercise any control. It is further said that even if they be represented by any guardian, still there can be no *possession* for want of the *third* element of representative possession; *viz.*, the assent of the principal Hence, it is said that *representative possession* is no *possession* in the proper sense of the term. But really in this case, the guardian who supplies the mental deficiency of the ward assents for him; and thus the defect is cured.

An instance of transfer of detention without possession may be found in the case when an owner sends a moveable thing to another person through his servant.

214. *Explain briefly in what sense the derivative possessor is a possessor.* (B. L. 1897.)

A. A *derivative* possessor; *e.g.* a pledge holder, the "emphyteuta," the "precario tenens," and the "sequester," cannot be said to be a true possessor, as to none of them can the *animus domini* (the *second* essential element of possession) be attributed; but it is a fact that the Interdicts were accorded to them. Savigny in order to explain this anomaly states that these persons have got a sort of *derivative* possession for practical purposes. "Derivative possession" is a kind of possession in which the possessor has control over the thing possessed by him and which he may dispose of in such away as he likes, subject to the right of the owner which he does not deny; *e. g.*, the *possession* of a borrower, or that of a lessee.

215. *How may the "orbit" of the right of "possession" be inferred?*

A. From a *list* of the *acts*, which are its *violations*; *e. g.*, *trespass* and *conversion*. A "trespass to goods" implies their *removal* or *injury*, which may be justified as done in exercise of *rightful distress*, or *self-defence*. Goods are said to be

"converted by any one, who wrongfully assumed to act as their owner."

216. *When does Possession commence and terminate? How may the corporeal and mental elements of Possession be separated?*

A It *commences* when "such combination of control and intention as is required by a given system of law" takes place; and it *terminates* by an "express abandonment of the object;" and the termination may also be due to a tacit relaxation of corporeal control or intention.

Separation of *corporeal* and *mental* elements of possession takes place sometimes; *e.g.*, when the *control* is exercised by an agent, and *intention* is exercised by the *principal*, or when both the elements are exercised by the agent under the *delegated powers* of his *master*, or *subject* to his *ratification*.

217 *What is meant by "Quasi-Poseession?" Illustrate it by examples.*

A. It is the "control, which may be exercised over *advantages*, short of Ownership, derivable from objects: *e.* g., a *right of way*, and an "*advowson*". Again, it may be said to be possession of *abstractions*, and *incorporeal things*, which are not perceptible to the senses.

218. *State with whom Possession lies in the following cases, giving your reasons in each case*:—

(*a*) A man walking along the road with a bundle sits down to rest and places his bundle on the ground at a short distance fron him. May he be said to be in possession of the bundle, or of the ground? (*b*) A man is bound-hand and foot with cords. May he be said to be in possession of the cords? (*c*) A purchaser of land enters upon it but is opposed by the seller; or both the seller and purchaser going upon the land are opposed by a *third* person, who disputes the right of both of them. May the purchaser be said to be in

possession here? (*d*) A man leaves his home, and goes to follow his business in a neighbouring town. May he still be said to be in possession of his family—house and propprty? (*e*) The key of a warehouse in which the goods are stored is made over to the buyer Is the buyer or seller in possession of the goods? (*f*) Timber is delivered to the buyer by his marking the logs in the presence of the seller. Whether the buyer or seller is in possession? (*g*) After handing over and receiving possession of goods at a public wharf both buyer and seller go away. In whose possession do the goods remain? (*h*) Fishes exist in a river, the right of fishery belonging to *A*. Does *A* possess the fishes? (*i*) Fishes exist in a pond, the owner of which is *A* Does *A* possess the fishes? (*j*) Fishes are placed in a receptacle which belongs to *A* Does *A* possess the fishes? (*k*) A wild animal is mortally wounded by *B*. May *B* be said to possess it? (*l*) *A* takes a ring belonging to *B*, and throws it into the sea. Does *A* or *B* remain in possession of the ring? (*m*) A jewel drops from my hand when passing through a forest, belonging to another person, and while passing through one's own house. (*n* A wild animal which was captured escapes to the forest.

A. (*a*) The man is in possession of the *bundle*, as though not in actual contact with it, he has the right to deal with it as he likes and to exclude all other persons. He is not in possession of *land* as though he is in actual contact. he cannot deal with it as he likes, it not belonging to him. (*b*) The man is not in possession of *cords*, as though in actual contact with it, he cannot deal with it as he likes. (*c*) The purchaser cannot be said to be in possession of *land* as he is opposed and has not acquired the right to deal with it as he likes, though he is in actual contact. (*d*) The man is still in possession, as though not in actual contact, he has

right to deal with the *house* and *property* as he likes. (*e*) The buyer, as he is in a postion to get actual possession of the goods and also to deal with them as he likes. (*f*) The buyer is in possession as timber has been made over to him, and he can now deal with it in any way he likes. (*g*) The buyer remains in possession as he is able to deal with the *goods* in any way he likes. (*h*) *A* does not legally possess the *fishes* as they may escape easily and hence he can not deal with them as he likes. (*i*) If tho pond be a large one, the same remark applies as to the fishes in a river. (*j*) *A* possesses the *fishes* as he can deal with them as he likes. (*k*) *A* does not possess it until he gets hold of it as it may escape or be taken possession of by another person or animal &c. (*l*) and (*m*)—*A* does not possess the *ring* as he loses control over it when lost in sea or forest, but he is in possession when it is lost in his house as he has complete control over his house. (*n*) The captor loses possession as he loses all control over the animal.

219. *Give a description of the right of Ownership.* (B. L. 1898.) *What is meant by "Ownership," and how is it limited?*

A. (1) *Ownership* is a *measure* of *right*, which the law gives over an object, "quite irrespectively of having any actual or constructive control over it." It is also defined as a "plenary control over an object." Austin describes it as "*a right over a determinate thing, indefinite in point of user, unrestricted in point of disposition,* and *unlimited in point of duration.*" See q. No. 220 to 228.

(2) *Ownership* is *unlimited* in comparison with other rights over objects; but it is *limited* as it is to be "enjoyed in such a way as not to interfere with the rights of others."

220. *Shew by a table the orbit of Ownership and describe how it is related to Possession.*

A. See Table VII. App. *B.*

Possession is inherent in *Ownership*, unless expressly severed from it; *e.g.*, when property is *let, lent* or *mortgaged.*

221. *How are the rights of enjoyment, destruction and alienation limited and divided? Illustrate them by examples. What are the objects of Ownership?*

A. Right of *Enjoyment* is *limited* by—(1) the rights of the State; *e.g.*, the State may take some portion of the produce of property or of the property itself, or authorize some act in its vicinity, which may diminish its value, or it my a forbid particular use of it, (*e.g*, growth of *tabocco* in England and Ireland, or the carrying on of noxious trades); (2) the rights of the co-owners; or (3) the rights of others; *e. g*, when they have got a right of way over one's land, or right to receive the water of a stream or the like.

(1) *Right of Destruction* is *limited* as some objects are not practically destructible Right of *Alienation* is also similarly *limited*; *e g* it is forbidden in *fraud of creditors*, or in *mortmain.* It may be divided into (1) *total*, when the *right itself*, and (2) *partial*, when a *fraction* of it, is transferred. (2) The objects of *Ownership* are:—(1) *physical objects*; (2) *collection of rights*, and (3) the *sum total of a man's fortune*, including objects owned, and the value of his claims, after deducting the claims against him.

222. *What are the Rights over physical objects, and their violations?*

A. The *Rights* are 1) to have them not taken away; (2) to have them unimpaired in value; and (3) to have their title not weakened. Their *violations are*—(1) *conversion*, (2) *detinue*, (3) *trespass*, (4) *slander of title*, and (5) *nuisance.*

223. *Describe the various intangible objects of Ownership.*

A. They are:—(1) *Patent right*; *i. e.*, the exclusive

right of *using* a new process of *invention* for a term of years as also the right of *letting* or *selling it*, which the inventor gets from the State; (2) *Copy-right; i. e.*, the right, which is granted to the authors, the painters, the engravers, and the sculptors by the State in the production of their genius; (3) Trade-mark; (4) Franchise; *i.e.*, royal privilege, which a subject may acquire to have a fair, a market, a forest or a free-fishery: (5) *Bonorum Universitates*:—the complex mass of rights "in rem" and "in personan" less deductions, which a person may have and which as soon as he dies is called a "hereditas"

224. *What are the chief methods by which Ownership is acquired?* (B L 1891.)

A It is acquired

I. With *possession* by (*a*) "*Occupatio*"; *i. e*, the taking of what previously belonged to no one; (*b*) "*Specificatio*;" *i. e.*, the working up of materials belonging to another into a new product: (*c*) "*Fructuum perceptio*"; *i. e.*, the rightful taking of the produce of property by a person who is not owner of the property; (*d*) Lawful possession for such periods as may be recognized by Law as being sufficient for the purpose; *e g.*, *Usucapio* of Roman Law and *Acquisitive Prescription* of English law as distinguished from "*Extinctive Prescription*" or the "limitation of actions" which causes no transfer of rights, but loss of remedy

II. It is also acquired *without* an act of *possession*; *e g*, (1) Accessio, which may be (*a*) land acquired by alluvion or accession; (*b*) *moveables* fastened to *immoveables*; *e. g.*, a house; (*c*) *moveables* fastened to *moveables*; *e. g.*, an embroidery to a garment; and (*d*) "*confusio*" and *commextio*" which usually produce joint-ownership.

225 "*The Prescription of English law differs in some*

important particular from both the Usucapio of the earlier Roman law, and the prescription of the latter." Discuss this proposition (B L. 1896.)

A. *Usucapio* was in Roman law a mode of acquiring ownership by possession of two years in case of land, and one year in case of moveable which was *bona fide* and under a color of right *Prescriptio* was in Roman law, a rule of limitation which the defendant in a case might avail of when the plaintiff was late in asserting his claim. The English idea of Prescription, it may be noted, is a mode of acquisition of title by possession; and it differs from *Usucapio* in this, that the possession need not be bona fide and under color of right; and from *prescriptio* in this, that it bears no sense of limitation.

226. *When does derivative Acquisition take place, and how?*

A. It takes place either *intervivos*, or upon *death*. In the *former* case, it is effected by *alienation* and *conveyance*; and in the *latter*, by *legacy* or *donatio mortis causa.* As a *general rule*, alienation becomes complete when the alienatory contract is complete.

227. *Describe the dispositive and divestitive facts of general application with regard to Ownership.*

A. *Ownership* is disposed of, or transferred when a *universal succession* takes place on account of *death, bankruptacy* &c Besides, there are *dispositive* facts, which are (1) *voluntary*; *e. g.*, *purchase* and *gift* or *testament*, (2) *involuntary.*—*i. e*, the result o causes external to the parties, or due to any operation of a rule of law, *e. g.*, decision of court, bankruptcy, marriage, &c.

The divestitive facts of Ownership are—(1) *death* of owner, (2) his *entering into religious seclusion*, (3) his *conviction* for serious crime, (4) his *outlawry*, (5) *causes*, which *produce*

forfeiture ; (6) *alienation*, (7) *abandonment*, and (8) *destruction* of the object owned.

228. *What are the different modes of Ownership? Give examples. Define the rights called "Jura in re aliena," and "Nuda Proprietas." Enumerate the important species of "Jura in re alieana."*

A (1) *Ownership* may be (1) *exclusive*, or (2) *joint* with others; *e g.*, joint-tenancy in India, when the quantity of share of each tenant is not recognized, and tenancy-in-common in England where each co-tenant has a quantitative share in the property. *Ownership* may be also (1) *legal*, or (2) *equitable*.

(2) The *elements* of the right of Ownership which may be granted to one person over an object of which another continues to be the owner are called "*Jura in re alieana;*" and the residuary right of Ownership which exists after one or more of the subordinate elements of it, (*e. g.*, possession or use) are granted out to other persons is called by the Romans "*Nuda Proprietus.*" The important species of "*Jura in re-aliena*" are (1) "*Servitude*" and (2) "*Pledge*" Two others; *viz.*, "Emphyteusis" and "Superficies" were peculiar to the Roman Law.

229. *Explain "Emphyteusis," and "Superficies." Mention what in English and Indian Law are analogous to "Emphyteusis."*

A. The right of a person, who was not the owner of a piece of land, to use it as his own in perpetuity, subject to forfeiture on non-payment of a fixed rent and on certain other contingencies, was called in Roman Law as "*Emphyteusis* ;" and it is analogous to a *feudal tenant* in English Law, and to a *ryot* in Indian Law

"*Superficies*" was the right in Roman Law, which

one person might have in perpetuity, or for a very long term of years over a building constructed on the land of another

230 *To what class of rights do Servitudes belong?* (B L. 1897.)

A They belong to the class of rights called Rights *in rem.*

231. *Define "Servitudes," "Dominant Tenement," and Servient Tenement." What is the origin of "Servitudes?"*

A. "*Servitudes*" derive their name from imposing "a sort of subjection upon the land-owner, whose rights they restrict in favour of his neighbour, or rather in the plot of land itself in favour of the neighbouring plot." The land which benefits by a Servitude is called the "*dominant tenement,*" and the land which is burdened with it is called the "*servient tenement.*" A *Servitude* may be defined also as 'a real right, constituted for the exclusive advantage of a definite person or definite plot of land, by means of which single discretionary right of user in the property of another belongs to the person entitled. The origin of Servitudes seems to have been artificial extension of natural rights.

232. *How may Servitudes be divided? Define "real" and "personal" Servitudes Give examples of the different kinds of Servitudes.*

A "*Servitudes*" may be divided into (1 —*positive*; *e g*, right of way or water, and (2) *negative*; *e.g.*, easement of a house; or (1) *continuous*, and (2) *discontinuous*; or (1) *rural*, and (2) *urban*; or (1) *apparent*, and (2) *non-apparent* or (1) *real* and (2) *personal.*

233. *Distinguish between Praedial Servitudes and Personal Servitudes according to Roman Law. Give an instance of each.* (C. U. B. L. Ex. for 1889.)

A. "*Real,*" "*praedial* or *appurtenant*" Servitudes are

such rights as exist not for the benefit of any individual as such, but as giving increased value to a given piece of land, as *Easement*; and *personal*, or "*in gross*" Servitudes, are such rights as may be enjoyed by an individual as such irrespectively of the ownership of land; *e g.*, usufruct.

234 *How may real Servitudes be divided? Define the divisions and give examples of each division*

A They may be divided into—(1) *Profits a prendre*, and (2) *Easements.* "*Profits a prendre*" imply that the owner of the dominant tenement is entitled to remove certain tangible objects from the servient tenement; *e g.*, rights of a "common of pasture," "of piscary," "of turbary" (digging turves), and of "estovers" (cutting wood.)

"*Easement*" may be defined as "a privilege that one neighbour hath of another, by writing or prescription, without profit as a way or sink through his land, or the like;" *e. g.*, rights of way, rights to the use of water, to the free reception of light and air, or to the support of buildings.

235. *How did the Romans distinguish between "rural" and "urban" Servitudes?*

A. They turned upon the general suitability of right for the enjoyment of land or of buildings generally.

236. *Does English Law allow any Servitude "for prospect?" If not, why?*

A. No. As "prospect" is a matter of delight and not of necessity, no action lies for stopping thereof in English Law.

237. *Give some examples of rights of "common in the soil," and state whether they fall under Profits a prendre.*

A Rights of *quarrying*, or *digging*, for coal or minerals are rights of "common in the soil;" but they are different from "Profits a prendre," and do not fall under it.

238. *Compare the right which in English Law the people*

of a given place may acquire by custom to go upon a plot of land at certain times for a purpose (e g. to hold horse-races or to dance in the green) with servitudes..

A. Such rights are analogous to *Servitudes*, but are not reducible to them.

239. *How are "real Servitudes" acquired and lost?*

A. They are usually *acquired* by *grant*, *testament* or *prescription*; and they are *lost* by *express release*, *abandonment* and *union* of the ownership of dominant and servient tenements.

240. *Compare "Personal Servitudes" with Profits 'a Prendre and Easement.*

A. "Personal Servitudes" are rights of enjoyment exercisable by a given individual, as such over the property of another; and they may be imposed not only upon lands, but also upon moveable property; *e. g*, cattle, furniture, slave. "*Profits a prendre*" may similarly be enjoyed by an individual apart from his ownership of land; but an *Easement* which is indentified with *real Servitude* can never be so enjoyed.

241. *How did the Romans divide Personal Servitudes?*

A They divided them into *two* grades; *viz.*,—(1) *Use*, implying *user* of the object itself without any advantage from the *products* of the object; and (2) *Usufruct*; *i.e.*, rights of enjoyment of the object and its products.

242 *What sort of right in English Law corresponds to "Usufruct" of the other systems?*

A. The right of a *life-interest* in English Law corresponds to "Usufruct" of Roman and French Law; *e.g*, when an English testator gives to *A* a *life-estate* with remainder to B, a French man would leave the property to *B*, subject to a "*Usufruct*" to *A* for life.

243. *What was "Quasi-Usufruct," and with regard to what was it allowed?*

A. "*Usufruct*" was allowed with regard to such things as were capable of being handed over to the proprietor on termination of the right in the same state in which they were received; *e. g.*, a flock; but there are objects, *viz.*, wine, corn, dress &c. which cannot be used without destroying them; and hence, "*Quasi-Usufruct*" was allowed with regard to them.

244. *What are "Reallasten" and "Licence?"*

A. A "*Reallasten*" was a duty, recognised in Roman Law as "attached to a piece of land of periodically performing positive acts"; *e. g.*, payment of ground rent, the maintenance of dykes, &c. A "License" passeth no interest, nor alters or transfers any property in any thing, but only makes an action lawful which without it had been unlawful.

245. *How is a Pledge distinguished from a "Servitude" or other rights in re aliena?*

A. The *latter* rights enable the person of incidence to enjoy the physical qualities of a thing, whereas the *former* rights enable him to receive a definite value from another, and in default of it, to realize it by sale of the thing. The object of the *latter* rights is "to extend the advantages enjoyed by a person beyond the bounds of his own property;" but that of the *former* is to ensure receipt of some value to which he is entitled

246. *What are the purposes or objects of a Pledge?*

A. They are—(1) to give the creditor a security on the value of which he can rely, which he can readily turn into money, and which he can follow even in the hands of the third parties; (2) to have the thing in the possession of the debtor (who is owner), and thus to give him every facility for satisfying the debt.

247. *Describe the varieties of Pledge with their main features.*

A. They are as follow : –

(1 *Mortgage* :— English Mortgage is the same as the Roman "*Fiducia*" and Scotch *Wadset*) involves transfer of ownership in the thing pledged from the debter to the creditor with a condition for re-transfer upon due payment of the debt.

(2) *Pawn* :— Roman *Pignus*) involves transfer of possession of the pledged thing to the creditor, the ownership of it remaining with the debtor. As a rule, the creditor cannot use the thing ; and if he is to take its profits by way of interest, it is called "Antichresis." Originally such creditor had no power of sale, except by express agreement ; but it became customary, and was at last presumed. It arises from contract or judicial sentence

(3) "*Lien*"—Vendors of property and persons, who have expended work and labour on goods have a lien over such property, and goods ; *i.e.*, they may retain them in their possession till their claims in respect of the same are satisfied. "Lien" is a real right as the person enjoying it can obtain redress by an action of *trover* against any one interfering with it. It is distinguished from "pawn" in this way that it is a mere right to retain *possession* and ends with possession, whereas the *pawnee* gets better rights, and can deal with the pledged thing as his own, if the debt is not duly paid,

(4) "*Hypothec*"—is a kind of Security, in which the *ownership* and also *possession* of the thing pledged remain with the debtor It arises from (*a*) *Law*, when it is called (tacit hypothec) ; (*b*) *Judicial decision*, and (3) *Agreement.* It originated with the right of the landlord to claim the goods of the defaulting tenant in order to realize his rent which

is known as "*distress*;" and it has been subsequently extended to wives, pupils, minors and legaties over the properties of husbands, tutors, curators, and heirs respectively.

The *disadvantages* of Hypothec are (1) it facilitates preference of one creditor over another, and (2) disables a creditor from knowing if the property is already encumbered, as both possession and ownership ramain with the debtor. Mortgages share also these disadvantages which result from secrecy.

248. *What is "Registration" of Securities, and how is it useful?*

A. To avoid the aforesaid disadvantages it has been provided that all Securities should be *registered* before a *public officer*. As the same objct may be pledged to several creditors, it becomes necessary to ascertain which of them is to be given effect to; and to facilitate this purpose, the system of *Registration* has been introduced, the rule being this that all Securities will take rank in accordance with their respective dates of registration.

249. *What are "Privileges" and "Tacking?"*

A. In Roman Law, some exceptions were made to the rule of chronological order of Securities, *e g.*, a pledge-holder with possession was considered to have a "privilege." "Tacking" is in English Law another exception to the chronological order of Securities as it unites Securities given at different times and prevents any intermediate purchaser from redeeming or discharging a prior line before redeeming or discharging a subsequent lien; and in accordance with it a creditor having any other claims for money in writing against the debtor could retain possession of the Security, although the debt for which it was originally given was satisfied whether these other claims were created before or after the Security was given.

250. *How are Securities transferred and terminated?*

A. They are usually transferable only together with the rights to which they are accessory. They terminate with (1) *discharge* of the claim* to which they are accessory; (2) by being released; (3) by *destruction* of the thing pledged; (4) by the creditor becoming owner of the thing; (5) by lapse of time, when they are limited by *duration.*

251 *Describe the aforesaid vi. Class of Rights in rem with their main features.*

A. *Immunity from fraud, i e.*, the right not to be induced by fraud to assent to a transaction, which causes one damage.

252. *What is the peculiarity of Immunity from fraud as a Right "in rem?"* (B. L 1896.)

A It differs from the previous rights as they are infringed by acts done against the will of the person of incidence, but it is infringed while the same person is a consenting party to his own loss.

253. *What are the essentials of a fraudulent Representation according to English Law?* B. L 1896)

A. They are—(1) representation being untrue in fact (2) it being made with knowledge of its untruth, or without belief in its truth, or with recklessness as to its truth or untruth; (3) it being made for the purpose of inducing another to act on it.

254. *Ennumerate some usual forms of fraudulent mis representation?*

A. They are :—

(1) When a person fraudulently represents himself to be an agent of another, and the third person suffers loss thereby.

(2) When false statements are made in the prospectus of a Company, and some persons who are thus induced to become sharers suffer loss.

(3) False statements regarding credit or honesty of third persons (*e.g.*, customers, servants) causing loss to tradesmen and employers.

(4) When one person induces a woman to marry him, falsely alleging that he has no wife.

(5) When a master by show of authority makes his servant do something illegal.

(6) When dangerous articles are knowingly bailed, with out intimating the bailor of their quality.

(7) When an untrue warranty is knowingly superadded to a contract of sale.

CHAPTER IV.

PART II.

PRIVATE LAW. RIGHTS "IN PERSONAM."

255 *How do the Roman Jurists and their followers radically divide Rights and what are in their opinion opposed to Rights "in rem?" How does Holland divide Rights radically?*

A. The Roman Jurists and their followers adopt the restricted or unrestricted *character* of the "person of incidence" as the radical distinction of *Rights*; and in their opinion, the *Rights "in rem"* are opposed to *Obligations*," which include all *Rights "in personam"* whether prior to wrong-doing or arising out of it.

Holland divides Rights *radically* into (1) those rights which exist, and (2) those which do not exist, antecedent to wrong doing. He calls the former class as "Antecedent" and the latter class as "*Remedial*" *Rights*. He divides each of them again into (1) rights "*in rem*" and (2) rights "*in personam*."

256. *What rights of Roman law correspond to "Antecedent" and Remedial Rights "in personam?"*

A The "Antecedent Rights in personam correspond to the Roman *obligationes ex contracta,*" and "*quasi ex contractu;*" and similarly the Remedical Rights "in personam' correspond to obligationes *ex delicto* and "*quasi ex delicto*" and also obligations arising from breach of contract. Mr Bishop has used the expression "*non-contract law*" as equivalent to "*obligationes ex delicto*"

257. *What is the radical sense of Obligation? Shew how does it correspond or not to Rights "in personam" How have Savigny and Kant described "Obligation?"*

A. The radical sense of "Obligation" is a "*tie,*" whereby one person is bound to perform some act for the benefit of another. Sometimes the parties agree thus to be bound together and sometimes they are so bound without their consent. In every case, it is the *Law*, which ties and unties the knot; and the same *rights*, which when considered from the point of view of the "*Law*" imposing it, is called "*Obligation,*" is called *Right in personam* from the point of view of the "*person of inherence.*"

Savigny describes "*Obligation*" as the control over another person, yet not over this person in all respects (in which case his personality would be destroyed but over single acts of his, which must be conceived of as subtracted from his free *will*, and subjected to our *will*," and Kant describes it as "the possession of the *will* of another as a means of determining it, through my own, in accordance with the Law of freedom to a definite act."

258. *Illustrate Right "in rem" and "in personam" by examples.*

A. When a man owns an estate, he is *said* to have a

right "in rem,"—*i. e.*, a right against all the world to refrain from trespassing on any land appertaining to it; and if he contracts with a person to keep his land in order for a fixed sum, he is said to have a right "in personam" against the latter. Similarly, a doctor who buys another doctor's business, the latter agreeing not to practise within some miles of his dispensary, has a right "*in rem*" against all the world not to be molested in the exercise of his profession; and a right "in personam" against the retired doctor not to be competed for in the vicinity.

259. *How does Holland divide the Antecedent Rights in personam?*

A He divides them into Antecedent Rights arising out of (1) contract and (2) Law, and he calls the first class of rights as "ex contractu," and the latter class as "ex lege" Rights He divides again the "ex lege" rights into (*a*) official, (*b*) fiduciary, (*c*) meritorious, (*d*) domestic.

260. *Describe the Antecedent "ex lege" Rights "in personam" with their main features.*

A. Domestic "ex lege" rights "in personam" are those rights which one member of a family has against another as arising out of Law, (as distinguished from such rights "in rem" which one member of a family has with regard to another, but against all the world which have been discussed in the previous chapter); and they include (*a*) rights of a husband over his *wife* and *vice-versa* The husband has a right (1) that his wife shall associate with him in default of which he can sue for restitution of conjugal rights, and (2) she shall not commit adultery, and if she does it, she may be sued against for divorce, and thus deprived of any claim to the society or support of the husband. Formerly, the *husband* could in English Law restrain the *personal liberty* of the wife and could

also chastise her for levity of conduct, but he cannot do it now since the decision; *viz.*, R. V. Jackson 91, 1q. B. 671. Similarly a *wife* may also sue against the husband for restitution of marital rights or for a *divorce* A decree for enforcement of *marital rights* is no longer enforceable in English Law by attachment. It may be doubted whether rights of the husband and wife are due to contract, or Law; but they do really belong to Law; for, the personal incidents of marriage are attached to it by Law. A marriage contract is like a sale of property; for, in both cases, the contractual act is complete, when the *status* has been produced; and the resulting rights are created by law.

(*b*) Rights of parents, over *children* and *vice-versa*. The parents acquire a right on the birth of a child to chastise or restrain him moderately and also to control his actions while he is of tender age Similarly, a child has a right to be supported by *parents* and a parent also to be supported by children.

(*c*) Rights of *guardian* over *ward* and *vice versa*, are artificial imitations of rights of parents over children and *vice-versa*.

(*d*) Rights of feudal lords over vassals and *vice-versa*.

II. Fiduciary "ex lege" rights in personam are (*a*) Trusts in which the *person of inherence* called the "cestui-que trust" enjoys a right "in personam" against the *person of incidence* called the "trustee." Lord Hardwicke defines a *trust* to be "such a confidence between parties that no action at law will lie, but there is merely a case for the consideration of the Courts of Equity" *Trusts* are inserted in wills, marriage deeds, deeds with creditors and other instruments necessary f r the comfort of families and the development of commerce. *Trusts* may be created *intervivos* or by *testament*.

History of Trusts :—The histery of *Trusts* is a curious one as it began like the Roman Fideicommissa with an attempt to evade the *law*. The Statutes of Mortmain, which were passed to prevent the alienation of lands to religious bodies, led to the introductian of "*Uses*" by which the grantor alienated his land to a friend to hold "to the use" of a monastery, the clerical chancellors giving legal validity to the wish thus expressed. This sort of "*Uses*" were put a stop to by 15 Rich. II. C. 5; but "Uses" continued to be employed for other purposes as they were found to be more malleable than the "legal estate," and offered many modes of escaping the rigour of the Law. Thus there continued to be many cases, in which, the Court of Chancery was able in spite of the Statute of Uses, to enforce what was otherwise merely moral duties.

(*b*) *Rights against executors, administrators, heredes, trustees of bankrupts, and co-proprietors*; *e. g.*, a legatee and a creditor of an estate can enforce the legacy and the debt to be paid by the executor, and co-heirs or joint owners have mutual rights for management of the property.

(*c*) *Implied Trusts*—(*e g.*, a person in whose name property is bought with the money of another is a *trustee* for him; a person who agrees to sell a property to another is a *trustee* for him, till the sale is complete; a person to whom money has been paid by mistake is a *trustee* for the mistaken payer) which are based upon the principle of the English Law that *a trust shall never fail for want of a trustee.*"

III. *Meritorious "ex lege," antecedent Rights in personam* are the *rights* which the English Law gives to (1) the salvors of ships in distress; and (2) recaptors of ships which have been made prize of by the enemy; (3) persons who have supplied necessaries to lunatics or drunken persons &c

incapable of entering into an agreement. These rights correspond to those of the Roman *Negotiorum gestar*; *i. e.*, right which a person had to compensation from another for voluntary service rendered in his absence. The principle on which a person is made liable for compensation in these cases is that he is by law supposed to have made a contract or the ground that he ought to have done it; and hence, these cases are said to be *implied Contracts* Although the expression "*implied Contract*" may be ambiguous, it is not so objectionable, as "implied Obligation;" for "Obligation" attaches by express Judicial declaration whatever may be ground of it.

Lord Justice Bowen thus laid down the English Law on this point; *viz.*,—liabilities are not to be forced upon people behind their backs, any more than you can confer a benefit upon a man against his will. There is an exception to this proposition in the Maritime Law. There are *three* rules on this point. A man must not be made to pay for a service (1) which would not have been accepted if it had not been supposed to be disinterested; (2) which he could have rendered to himself or obtained elsewhere at a less cost; (3) when the advantage of the service is fully counterbalanced by an equivalent loss in indemnifying the helpers.

IV. *Official ex lege antecedent Rights in personam* are (*a*) the personal rights of a member of a community to call upon a public official to exercise his functions on his behalf when any such occasion arises. The English Law grants such rights against the public ministerial officers, *viz*, Collectors of customs, Registrars of births, Bishops, Lords of manors, Sheriffs or Postmen. (4) The right of a suitor for action in Roman Law against a public officer—(Judge, Jury, Coroner, Arbitrator &c., when he gave a wrong decision either corruptly or through ignorance). In English Law, there is no such

action unless the public officer exceeds the bounds of his authority. The following are also such rights; *e.g.*, (*a*) rights which every person has against an inn-keeper to be received in the inn, if there is room in it, and if he be a well-conducted traveller ready to pay for his entertainment; (*b*) rights of every person to have his things carried by "common carrier" who has room for them in his carriage when he is ready to pay for such carriage; (*c*) the right to get compensation for any injury sustained for non keeping of medicines in a ship when it is required by law. Rights of action against surgeons for want of skill and against carrier for want of care and the like have been sometimes included in this class; but they do really depend on contract and are called "torts," founded on contract.

261. *Explain by illustration what are the "two" senses of Contract and with which of them are the antecedent "excontractu" rights in personam concerned.*

A. When a man buys a watch for ready money, he makes a *contract* with the vendor the result of which affects once for all the *legal rights* of both of them. In such a case, the contract gives rise to rights "in rem;" and in so doing its force is instantaneously spent But if the said man selects a watch and agrees to buy it at a fixed price on a future day, then there would also be a contract, but the right to which it would give rise, would be not a *vested right*, but an *outstanding* or *continuing* right in the customer to buy it at the time and for the price agreed upon, with a correlative right in the shop-keeper to received the price in due course. The antecedent *ex-contractu* Rights *inpersonam* are concerned with this latter and narrow sense of contract.

262. *Define a Contract.*

A. Acts, which produce legal results, may be eithre

one-sided (when the *will* of one party only is active) or *two-sided* (when the *wills* of *two* or *more* persons concur). A *two-sided* act, "having for its function the creation of a right" is a "Contract;" and it includes the creation of the rights *in personam* as well as "in rem."

263. *What is obligatory Contract? How do Savigny and Holland describe it? Give some other definitions of it.*

A. When the term *contract* is used in the aforesaid narrow sense, it is said to be "*Obligatory Contract.*" Savigny describes it as "the union of several in an accordant expression of will with the object of creating an obligation between them." Holland defines it as "an expression of agreement entered into by several, by which rights in personam are created available against one or more of them" It is also defined as a "speech between two parties whereby something is to be done;" Vice-Chancellor Kindersley says—"When both parties will the same thing and each communicates his will to the other with a mutual engagement to carry it into effect, then an agreement or contract between the two is constituted."

264. *How do you distinguish between a "contract" and its result? How are they distinguished in the Roman Law?*

A. They are distinguished as the *cause* and *effect.* The two-sided act itself is the contract, and the result to which it gives rise is the *contractual relation.* They are distinguished in the Roman Law as "contractus," and "obligatio ex-contractu" respectively.

265. *What is the Rule of Law with regard to the effect of Contract upon parties?*

A. A contract binds those persons only who are parties to it; and no person who is not a party to it is bound by it or derives any right from it unless by the creation of a *trust.*

266. *What are the different views with regard to legal help for enforcement of "Agreements?"*

A. Some people (*e. g.* the ancient Indians) think that Law should not help enforcement of agreements ; for it should be entered into only with those whose honor can be trusted ; but the contrary view is sanctioned by the civilized nations of the present day.

267. *What is Justice Holmes' theory of "Contract?" Criticize it.*

A. Holmes speaks of a "*Contract*" as "*the taking of a risk.*" The only universal consequence of a legally binding promise is that the law makes the promisor pay damages if the promised event does not come to pass, and he is free to break it until the time for fulfilment has gone by. But people think of performance rather than breach when they make *Contract* ; and it cannot be maintained that the performance of a contract is more optional than that of any other legal duty.

268. *Are all Agreements enforceable ? What are the essential elements of a valid Contract according to Savigny ?*

A. No. Many agreements produce no legal effect upon the mutual relations of the parties, and are therefore not enforceable.

Savigny analyses a Contract into :—(1) several parties ; (2) an agreement of their Wills ; (3) a mutual communication of this agreement, and (4) an intention to create a legal relation between the parties.

269. "*There cannot be a contract unless there is a union of several Wills to a single whole and undivided Will.*" *Explain and criticize this proposition referring briefly to the various theories that you are acquainted with.* (B. L. 1897).

A. The *theory* as propounded by Savigny requires *consensus* or *union of Wills* as necessary for a *valid Contract.*

But it may be said that the Law looks not at the *will* itself, but at the Will as voluntarily manifested. The Law enforces contracts to prevent "disappointments of well-founded expectations, which may arise not only from expression of intention, but also otherwise. The *newer* and *objective theory* of Contract does not require *union of Wills* as necessary for its validity The legal meaning of a Contract is not what one person intended or supposed another to intend but what a reasonable man, *i.e.*, a Judge or Jury, would construe it; and this is the *Newer* theory, which is supported by the rules with regard to correspondence and agency, and is consistent with the doctrine of *mistake*

270. *What is the "newer and objective" theory of Contract, and what are the grounds in its favor? Discuss such grounds.*

A The "newer and objective" theory of contract is this:—that

"The legal meaning of such acts on the part of one man as induce another to enter into a contract with him is not what the former really "intended," nor what the latter really suppose the former to intend; but what a "reasonable man *i.e.*, a Judge or a Jury would put upon such acts.

Correspondence:—When a contract is effected by post, the question turns on, not upon the union of Wills, but on the expression of intention exchanged between the parties.

Law of Agency:—The principal is liable for the acts of his agent, not merely so long as he continues mentally to empower his agent to act for him, but also so long, as he has not to the knowledge of third parties revoked the agent's authority.

Mistake:—When there is an essential error of fact, an agreement may be repudiated and avoided, and all payments made in pursuance of it may be recovered back. But even

here the failure of contract is due to (1) language, being meaningless or ambiguous, (2) the true meaning of the mistaken party is or might be known to the other party; and this will cover the cases of "error in person," "in corpore," "negotio." &c. The question in such cases—is—was the expression of one party such as should fairly have induced the other to act upon it?

271. *Ennumerate the essential elements of a Contract according to the "newer" theory.*

A. They are I (*a*) several parties; II. a two sided act by which they express their agreement; III. a matter agreed upon is both possible and legal; IV. is of a nature to produce a legally binding result; V. and such a result as affects the relations of the parties one to another; also VI. very generally either a solemn form or some fact which affords a motive for the agreement

272. *Describe the aforesaid I. Element of Contract with its main features.*

A. I. *Parties* :—A *Contract* requires at least *two* parties, *viz.*, a "promisor" and a "promisee;" or the Roman "*debitor*" and "*creditor.*" Hence when one and the same company has two departments—*i. e. insurance* and *annuity*, the *latter* department cannot effect an insurance with the *former* department—Grey *v.* Ellison, 1 Gift 438. The promisee must not be an "incerta-persona;" *e. g*, the Secretary for the time being; but the offer may be made to an unascertained member of a class; *e. g.*, to the finder of a lost purse whoever he may be. There may be more parties than one to either side of a contract; *e. g*, joint contractors, joint creditors and joint debtors.

273. *Describe the aforesaid II. Element of Contract with its main features.*

A. *The two-sided act expressive of Agreement*:—It consists of an offer on one side and an acceptance on another. An unaccepted offer creates no liabilities. The rules on this point are :—1. The acceptance must unconditionally correspond with the offer. 2. The acceptance must be contemporaneous with the offer, which may therefore be withdrawn at any time before it has been accepted. So a bidder is not bound, but is free to withdraw before the hammer has fallen.

SUBORDINATE QUESTIONS.

274. (*a*) *How long does an offer, which has not been expressly revoked, remain apen ?*

A. Common sense answers that it remains open for a reasonable time. German Commercial Codes keep it open only till an answer could be received in due course.

275. *Is an offer revoked by death (of the offerer) before acceptance ?*

A. There is difference of opinion on this point.

276. *Must acceptance be notified in every case to the efferer, or the nature of the offer implies that acting on the proposal will be enough without justification ?*

When the parties are at a distance whether the expression of intention by one party, or its communication to the other party is to be regarded ?

A. The Rules of the English Law on the above points are as follow :—An *offer* is *irrevocable* after it has been *accepted*. *Acceptance* must be not merely a *mental act*, but it must be communicated to the proposer, which may however be made by posting a letter, although this letter be delayed, or fail to reach its destination. A revocation of an offer is too late, when it though posted before reaches the acceptor *after* the

acceptance is posted. " A revocation of an acceptance, posted after but reaching the proposer simultaneously with the acceptance, probably prevents the formation of the contract.

There are circumstances, which though they do not render a contract void *ab initio*, yet renders it voidable at the option of the party who is disadvantaged by them; *e.g.*,— fraud, misrepresentation, undue influence (*i.e.*, acts which though not fraudulent amount to an abuse of the power which circumstances have given to the will of one individual over that of another), or *duress* (*i.e.*, violence to the person, or threatened violence of the same character.)

277. *Describe the aforesaid III. Element of Contract with its main features*

A. The matter agreed upon must be at the time of agreement both *possible* and legally *permissible.*

A thing is said to be *impossible* not only when it *cannot be effected*, but also when it is *practically out of the question* on the ground that it can be effected only at an unreasonable cost (*e.g.*, to recover a ring lost in the sea) or if it imports to have a legal effect unknown to the Law. A contract to do an illegal (prohibited by law) act is also *void* (*e.g.*, Sale of pork or wine under Mahomedan Law). Contracts, which are against public policy are also void—(*i.e*, for marriage brokerage in England; or for assigning the salary of a public officer)

278 *Describe the aforesaid IV., V., and VI. Elements of Contracts with their main features.*

A. The Agreement must produce a *legally binding result.* To accept an invitation and to make an engagement for a walking tour are *not contracts.*

The binding result must be produced on the mutual relations of the parties. Agreement of a bench of Judges, or of a board of directors are therefore *not contracts.*

All contracts in order to be binding require some formalities to be observed or are the results of some underlying fact called "*Causa*" in Roman law.

All the above *five* elements are necessary for a Contract in addition to the formalities; and unless the latter are observed, the transaction would be called "*Nudum pactum*" even though the above elements be present.

The expression of Agreement may be *written*, or *oral* or by words or by signs or merely by a course of conduct in which latter case it is called an "implied Contract." It must be expressed by the parties to one another; but they may also make it through their agents.

Agency.—may be created without any *formality*; but in English Law, it must be created by *deed* when a deed is to be executed by an agent. It may also be implied from the acts of the principal. Agents are "general"—"when their authority is defined by their character or business"; *e. g*, factors, brokers or partners; or "*special*" when their authority is limited by the terms of their appointment. No private instructions contrary to the usage of a general agent's business will limit the liability of his principle. The agent does his part as an *intermediary* and then *drops out* of the transaction; and it is therefore the case, that though an *agent* makes a contract it is only the principal, who can sue or be sued against.

279. *Describe the important features of Form necessary for a contract.*

A. (*a*) *Whether formal or informal contracts are historically the earliar?* The Romans regarded "*informal contracts*" to be earlier than "*formal contracts*" on the supposition that the *former* formed a *part* of the "*Jus gentium*" in the primitive state of society. But the modern Jurists think that early customs were rather complex and formal; and the "consensual

kernel of contract" has gradually disappeared with the husk of formalities.

(*b*) Advantages of solemn Form are *two-fold*:—(1) it prevents the bargain from being rashly struck; and (2) it facilitates the proof of what has occurred.

(*c*) Varieties of form :—

Among the Teutonic Conquerors of the Roman Empire only contracts accompanied by bailment, or entered into by means of a formality consisting in the delivery of a wand or similar object were enforced; and in later times, these were represented by a shake of the hand. Besides, the French recognised obligation by a customary seal; and the English Law recognises a deed sealed and delivered. "An *agreement* entered into by a deed sealed and delivered is called a "specialty" contract; and the same, made in any other way, even in writing, is called a "simple" or "parol" contract. The English Law enforces "specialty" contract like the Roman "Stipulatio"—without looking behind it to enquire into its equitableness, or into the motives, which caused it to be made, although both deeds and stipulations may be impeached on the ground of fraud, mistake or duress. The parties are also "estopped from denying the truth of those statements to which they have set their seals; and it is also said by some, that an offer by deed is irrevocable, though not accepted by the other party. Certain agreements can not be made otherwise than by deed. A less solemn formality consists in the reduction of a bargain to writing. Bills of exchange and promissory notes require to be made in this way. An acknowledgment of a debt barred by limitation requires also to be written and signed. The English "Statute of Frauds" requires that in the case of sale of goods for ten pounds or upwards, there must be some note or memorandum

signed by the parties, or their agents, unless it is followed by part delivery of goods or part payment of price; and no action can be brought on a contract which makes an executor personally liable or guarantees the debt on default of another or creates a liability in consideration of marriage, or relates to an interest in land, or is not to be performed within a year, unless some note or memorandum thereof shall be in writing, and signed by the party to be charged therewith or by his agent.

280. *Describe what are the "Cause" and "Consideration" of a Contract and what are their main features.*

A. Cause :—The Romans recognised *eight* informal contracts, *four* of which, *viz.*, loan for consumption, use deposit and pledge, were accompanied by bailment; and the other *four*, *viz.*, sale, letting, agency and partnership relate to the indispensable transactions of daily life. Other agreements were in later times enforced as "*pacta vestita*" All these were accompanied by a "*causa*" which though often consisting in part performance was in effect only the mark by which an arbitrarily defined class of agreements were—distinguishable; and agreements where there was no *cause* continued to be treated as "*Nuda pacta*" on which though they might be ground for a plea, no action could be founded. "*Consideration* :"—The English Law recognises no promise, unless it be under seal, for which there is no "*consideration.*" There are *two* rules with regard to consideration. (1) it need not be adequate, and (2) it must have some value. A "*Consideartion*" is any act of the plaintiff from which the defendant or a stranger, derives a benefit or advantage; or any labour, detriment or inconvenience sustained by the plaintiff, however small it may be, if such act is performed or inconvenience suffered by the plaintiff with the assent, express or implied of

the defendant or in the language of pleading, at the special instance and request of the defendant.

In English Law, *Contracts* are made by (1) *specialty* or (2) by *parol*; and there is no *third* class of Contract as contract in writing. If they be merely *written* and not specialties, they are *parol*, and a consideration must be proved.

The consequences of the above rule that consideration must have some value are —(1) a promise to perform an already existing legal duty is not a "Consideration;" and (2) a past fact though it may serve as a motive, can never be a good *consideration*, which must always be either present (executed) or future (executory).

281. *Describe the modes of strengthening a Contract.*

A. In addition to the requisites of Law, parties to contracts sometimes resort to some other modes for strengthening the same; *e. g.*, oaths are taken by which the Deity is as it were made a party to the bargain, and which are sometimes taken in consecrated buildings or in the presence of the sacred objects. But now the desired object is attained by getting third parties to guarantee the contract, or by giving property by way of security for its due performance.

282. *Describe how Contracts may be classified on different principles.*

A. They may be classified into :—

(1) "*Joint*," or "*several*" according to the number of parties on either slde;

(2) "Unilateral," or "bilateral" as both parties, or only one party are or is bound to a performance;

(3) "Formal," or "formless" as special formalities are required or not for their formation;

(4) "*Principal*," or "*accessory*" as contiacts made on their own account or for other contracts;

(5) "*Gratuitous*" or "*onerous*" as their object is liberality or gain;

(6) "*Real*," or "*consensual*" as they are accompanied or not by the delivery of an object;

(7) "*Aleatory*," or *not* as they depend or not upon an uncertain event.

(8) *Conditional*, or *unconditional* as they depend or not upon a condion;

(9) They may also be divided having regard to the particular kind of benefit promised; *e. g.*, exchange, rendering of services, &c.

283. *State what classification of Contracts has been adopted by Holland.*

A. Holland has adopted the classification of Contracts into "*principal*" *i e*, which are entered into without an ulterior object, and "accessory"—*i. e.* which are entered into only for the better carrying out of a principal contract.

284. *What kinds of Contracts are included in "principal" Coutracts?*

A. They include I. Alienation, II. Permissive Use, III. Marriage, IV. Service, V. negative Service, and VI. Aleatory Gain.

285. *Describe "Alienation" with its main features.*

A. "*Alienation*," or "*Alienatory Contract*" may be an act of liberality on one side or each party may intend by means of it to secure some advantage for himself. In the *former* case, it is (1) a contract to give, and in the *latter*, (2) a contract to exchange.

(1) *Contract to give or Liberalities* is only enforceable in some cases; *e.g.*, in English Law, when it is entered into

by deed; in France, before a notary; and in Roman Law, when it is rigistered, if dealing with a value exceeding five hundred *solids*, and although entered by word or mouth. In Roman Law and the derived systems, a gift may be rescinded when the beneficiary proves ungrateful. Gifts are also restrained by the claims of the family, creditors or of the giver. In English Law, *Alienation* is not allowed to defeat the claims of the creditors. In France, a father of a child cannot *alienate* more than half of his estate to a stranger; and in Mahomedan Law, no person can alienate more than one third share of his estate to stranger by *will*.

Gifts in contemplation of marriage to husband or wife are not voluntary agreements, but they are more than mere liberalities

(2) *Contract to exchange* —The earliest form of *exchange* or commutative alienation was *barter* by which one commodity was given for another; but this was superseded by *sale*, in which money is paid as price for a commodity purchased.

In Rome a *barter* was distinguished from a *sale*, on the ground that the *latter* was an agreement for the future transfer of property in consideration of the payment or an understanding for the future payment of price in money. When the price falls utterly short of the real value of the thing sold, the contract may be rescinded under some systems of Law.

In English Law, some formalities are necessary in the case of sale of *real property*; and subject to them, the contract is complete when the price is agreed upon; and the vendor is bound to deliver the thing sold to the buyer, who is bound to pay price as agreed upon. The vendor has, in the case of *sale* of moveables, *two* rights; *viz*, (1) "Lien," *i e*, a right to retain possession of it till the price is paid; (2) "*Stoppage in transitu*," *i. e.*, a right to

avoid the contract, on hearing of the insolvency of the buyer, while the goods are in course of transit to him, and not actually delivered to him.

Warranty:—There is much difference of opinion in the different systems of Law as to the extent to which a vendor impliedly warrants his title to the property sold or its quality. Warranty relates to peaceful possession of the thing sold, guar antee against eviction and the latent or patent faults of the said thing.

286. *Describe "permissive use" with its main features.*

A. It includes (1) *loan for consumption*; (2) *loan for use*, and (3) *letting for hire.*

Loan for consumption takes place when money or things are given to a man on the understanding that he shall on a future day return to the giver, not necessarily the things themselves but their equivalent in kind. It may be called *Alienation*, as the object becomes the property of the borrower: but as it is given for *use* only and the same or similar object is to be returned, it is properly called *Use*. Money received at a *bank* is generally (when without interest) a loan for consumption, to be returned when it is called for The duty of the borrower in such case is to return the same or similar (in quantity and quality) object and no excuse will avail him for non-performance of it.

Loan for use is essentially gratuitous; the right of the borrower being to *use* the thing lent, and his *duty* being to return the identical thing. He is not liable for wear and tear, or for loss by theft, but is expected to take proper care as it is for his benefit.

Letting for hire differs from *loan for use*, as the hirer pays rent and it is for the advantage of both parties. A *hirer* is not bound to take such great care as a *borrower.*

Letting of *moveables* is less formal than lease of lands. In England a lease of land for more than three years must be by deed. With regard to *letting* or *lease* the following points are important; *viz.*,—(1) right of the hirer to sublet, (2) accidental destruction during the lease, (3) warranty that the thing would suit the hirer, (4) rights of landlords and tenants to the fixtures and crops.

287. *Describe the Marriage Engagements with their main features.*

A. Such *Engagements are obligatory Contracts*, which create rights *in personam* to their fulfilment at the appointed time, while *marriage* is a *Contract* which creates rights "*in rem*" by affecting the legal rights of the parties and having no outstand ing claims between them. The *Teutonic theory*, which attached more importance to *betrothal* than to wedding, has been now superseded by the above theory. "Betrothal" was a sale of the woman by her guardian for "pretium puellae"; it came to be represented by handsel, and was not paid for till the wedding took place, In later times, the *betrothal* was the woman's own act and the handsel was payable to herself.

A "*Marriage*" is said to be "*clandestine*" as opposed to "*regular*," when it rests merely on the agreement of the parties, and is not performed solemnly before witnesses. The English Law never recognised it though it was included under the term a "pre contract of marriage" which gave either party in England down to the middle of the eighteenth century a right to use for celebration, and also a right to impede his or her marriage with a stranger.

Actions for breach of marriage were recognised in England first in the reign of Charles I., when it was held that the "promise" is a good and not merely a spiritual consideration, be it made to a man or to a woman. The *better opinion* on

this point, however is that as interference with the freedom of matrimonial choice is opposed to public policy, *no action lies* unless the complainant sustains *an injury.*

288. *Describe the Contracts for service with their main features.*

A. The important contracts are :—(1) for *caretaking* ; (2) for doing work on materials ; (3) for carriage ; (4) for professional or domestic services ; (5) for agency ; and (6) for partnership ; and each of them, may be either gratuitous or for reward.

(1) *Care-taking* :—The gratuitous care-taking of an object is called "*deposit* ;" and it is well defined as "a naked bailment of goods to be kept by the bailee without reward" and this is again "Sequestratio," when an object to which right is disputed is kept in the custody of a third person pending decision of the dispute ; or "depositum miserabile" or "*necessarium*," when deposit is made under circumstances which leave the depositor no choice (*e.g.*, in case of fire or shipwreck). *Care-taking* for reward is exercised by innkeepers, livery stable-keepers, ware-house men, wharfingers and the cloak-rooms of railway companies.

(2) *Doing work on materials* when gratuitous, involves liability for gross negligence in the doing; but when for reward, a higher degree of care is necessary.

(3) *Contract of Carriage* may be with regard to conveyance of persons as well as goods and by land or sea. In English Law, a common carrier is bound to convey all goods which he usually carries, unless his conveyance is full or the goods be specially dangerous. He is to warrant to carry safely and securely, and is liable for loss not immediately caused by the Act of God or the King's enemies for goods robbed or accidentally burnt ; and he (except a railway company) may charge different rates to different customers.

The carriage of goods by sea is regulated by a contract between the ship-owner and the freighter, called a "charter-party" by which the owner is generally relieved from liability for the act of God and the king's enemies.

Carriers of passengers do not insure their safety, and are liable for injuries caused by neglect or unskilfulness.

(4) *Professional Service*:—The previous services are distinguished from *professional* or *domestic* services by the facts that in the *latter* services no bailment is pre-supposed as in the *former*, and the undertaking is merely to perform some acts by one for the benefit of another.

In Rome, the professions of advocates, teachers of Law, Grammar, Philosophers, Surveyors, and some others were thought to be of too liberal a nature to be capable of leading to a compensation in money recoverable by judicial process. In English Law the professions of barristers and physicians belong to this class.

Domestic Service has arisen out of the Status of Slavery. A servant is usually entitled to get his wages though he be ill or unable to work. In English Law, a master is not liable for injuries which a servant may sustain in the course of his employment, or which may arise from the negligence of a fellow-servant.

(5) *Agency* is a species of contract for services entered into between a principal and his agent, and not between two principals.

Originally, a man could be represented only by person 'in his power" (*e.g.*, a slave or emancipated son), and only by such acts as were for his advantage. The contractual agency of a stranger has grown up gradually and was formerly a gratuitous act of friendship.

In French Code, the presumption of agency is that it is gratuitous; but in English Law, it is otherwise.

Classes of Agency:—Agents are "factors," *i.e.*, employed to sell goods for the principal; or "*brokers,*" *i.e.*, mediums of communication between buyer and seller. "Delcredere" agents for the sale of goods in consideration of a higher payment than usual are responsible for the solvency of the person to whom they sell them. Auctioneers, who are agents for the seller before goods are knocked down, become afterwards agents for the buyer also.

(6) *Partnerships* are societies in which several persons unite for the purpose of carrying on business in common, and upon terms that each of them shall be an agent for all the rest.

289. *Describe the Contracts for Negative Service.*

A. Contracts, by which men are restrained from carrying on a trade or profession, altogether or within fixed limits, are void unless the restriction is reasonable; but are valid, if not opposed to public policy.

290. *Describe the Aleatory Contracts.*

A. They include—

(1) *Bets* and *Stakes*, which are as a rule not enforced under the modern Systems of Law.

(2) Lotteries, which are illegal in England.

(3) Wagering contracts on the price of Stock.

(4) An agreement to pay an annuity so long as a given individual shall live, whether the individual is a party to the contract or not, is generally supported.

(5) *Loans to a ship-owner*, to be repaid only in case of the successful termination of a voyage are enforced with high rates of interest, as they afford compensation to the lender for the risk run by him.

(6) *Insurance* is a contract by which one party in

consideration of a premium, engages to indemnify another against a contingency or loss, by making him a payment in compensation if or when, the event shall happen by which the loss is to accrue.

Marine Insurance :—Ships are so insured that in case of the loss either total or partial of the ship or cargo by any peril of the sea during a given voyage, the owners are indemnified for the loss sustained by them, and also for payments made on account of "salvage," "general average," and "avaries grosses."

The *insurers* are known as *under-writers*, because each of them signs the contract or "policy," engaging to bear a certain proportion of the whole indemnity which may apply to the *ship*, to the *freight* which it is to earn or to anything on board.

Fire Insurance :—Loss occasioned by fire on land is indemnified against by *Fire Insurance* ; and damages of other kinds, *e. g.*, to crops by bad weather or to glass by hail-stones, by analogous contracts.

Life Insurance is a means by which contracts are made for compensation in case of illness or accident resulting in death or inability to work. It differs from other insurances in the amount which can be recovered under it. Policies of Insurances against fire or marine risk are contracts to recoup the loss which parties may sustain from particular causes. When such a loss is made good *aliunde*, the companies are not liable for a loss which no longer exists ; but in a *life policy* there is no such provision.

(2) *Between the surety and the debtor* :—How far the surety may avail of the remedies of the creditor against the debtor.

(3) *Between several sureties* :—How far one of them who

satisfies a debt can get contribution from others. The English doctrine of contribution was not known to the Romans.

291. *Describe Indemnity, Pledge and Warranty with their main features as Accessory Contracts.*

A. *Indemnity* implies a promise to indemnify "or save harmless." It is implied between principal and surety, and also between principal and agent; and in some systems, a surety may also indemnify another surety. The principal promises to indemnify his agent against all acts, which are not illegal. As to illegal acts, the maxim is "there is no contribution between wrong-doers."

Pledge:—As an *accessory* contract gives birth to *two* personal rights; *viz.*—(1) the right of the debtor to have the pledged property preserved with reasonable care; and (2) the right of the creditor to recover such cost as he may incur in the said act of taking care.

"*Warranty*" refers to title or to quality. It is generally *accessory* to a contract of sale, but is also added to many other contracts (*viz*, to a letting for hire). It is defined as "an express or implied statement of something which the party undertakes shall be part of the contract," and though part of the contract, collateral to the express object of it.

292. *What are the main "Accessory" contracts?*

A. They are (1) Suretyship, (2) Indemnity, (3) Pledge, (4) Warranty, (5) Ratification, (6) Account stated, and (7) For further assurance.

293. *Describe Suretyship with its main features.*

A. Suretyship or guarantee is a collateral engagement to answer for the debt, default or mis-carriage of another. "It is legally binding when the obligation to which it is *accessory* (*i. e., subsidiary*) is merely *natural, i. e., incapable of being judicially enforced, e. g.*, a guarantee of a promise made by a

minor. In English Law, it must be in writing. Under some systems, it passes, and in others it does not pass, to the heirs. There is a maxim, that the liability of the surety may be less than, but cannot exceed that of the principal debtor. It raises *three* classes of questions; *viz.*,—(1) *Between the creditor and the surety* :—(*a*) what acts of the creditor (*e. g.*, giving time to the debtor) will discharge the surety from his liability; (*b*) whether the surety may insist that the creditor is bound to bring action against the principal (or debtor); (*c*) whether the sureties are liable jointly for the whole debt or generally for proportionate shares of it or objects of it. It is added to a contract, but is no "condition precedent" to its coming into operation. It may be broken (for which action for damages will lie) without the contract itself being affected.

294. *Describe "Ratification," "Account Stated," and "Further Assurance" with their main features.*

A. *Ratification* Implies "adoption by a person as binding upon himself of an act previously done by him, but not so as to be productive of a subsisting legal obligation or done by a stranger, having at the time no authority to act as his agent."

In English Law, no "promise by a person of full age to pay any debt contracted by him during infancy, or no ratification made after full age of any promise or contract made during infancy is valid. The contract of a stranger can be adopted by action, words or writing; but only by one on whose behalf it was made.

An Account Stated is a contract superadded to a pre-existing contract by way of strengthening it, so that the creditor may rely either upon his original claim or upon the new claim thus created, but can in no way receive more than the sum originally due.

Further Assurance :—Conveyances of land and other instruments often contain agreements for further assurance. But strictly speaking they are nothing but *accessory* contracts to the principal contract to which they are attached.

295. *Describe how are personal rights transferred.*

A. *Transfer* :—Personal rights are transferred by *act of law*, *e.g.*, on death, marriage, bankruptcy &c.; but such rights and liabilities as arise from family relations, or depend upon the personal characteristics of either party cannot be so transferred; *e.g.*, arising out of a promise to marry, or to use surgical skill, or to paint a picture.

Transfer of personal rights by *act of party* is more restricted.

Previously, "choses in action" were not transferable in English Law; but this rule has been latterly relaxed. Now, a new *debtor* or *creditor* may be substituted with the consent of all; and some special contractual rights, *viz*., rights arising from Marine and Life Insurance policies, bail bonds, bills of lading are transferable, subject to all defences available against the original creditor. Only one class of instruments, *viz.*, *negotiable instruments*, or *paper to bearer*, *e. g.*, bills of exchange or promissory notes pass from one hand to another by delivery or endorsement; and in these cases, the new recipient of it acquires rights against the debtor without any notice to him being required; and if the paper is held *bona fide* and *for value*, it is not affected by flaws in the title of the intermediate assignors.

Assignability of negotiable instruments rests on the fact of their being material objects, and so capable of actual delivery; and the written document is thus as it were, an embodiment of what would otherwise be an intangible and therefore untransferable claim.

Generally speaking, liabilities do not pass by *Voluntary Assignment.*

296. *Describe how do personal rights terminate.*

A. *Extinction of personal rights* may be divided into *five* classes; *viz.*, (1) Performance, (2) Events excusing performance, (3) Substitutes for performance, (4) Release of performance, (5) Non-performance.

Performance of the acts for which the person of incidence is liable does release him from all liability.

Excuse:—(1) As a general rule, subsequent impossibility is no excuse in English Law; but is subject to *three* exceptions; *viz.*, (*a*) when the act due depends on the individuality of either party; in such case death affects the contract; (*b*) when the contract relates to a specific thing, which is destroyed; *e. g.*, a theatrical party proclaiming to perform an act which is burnt down; (*c*) a change in the law on outbreak of war between the countries of the contracting parties may make the performance of the contract impossible.

(2) All claims against a filius familius in Roman Law are cancelled when he is adopted in another family.

(3) *Merger*, *e g*, the right is sometimes extinguished or suspended when the same person becomes debtor and also creditor.

(4) A bankrupt is discharged from all claims.

(5) When a contract is rescinded judicially.

Substitutes for "Performance" are :—(1) "*Tender*" of the precise amount due, followed by "*payment into Court*," or into the hands of a public officer; (2) "*Compromise*" by which a part payment of a debt is accepted as satisfaction for the entire debt; (3) "*Datio in Solutum*," *i.e*, giving and accepting of another thing in place of the thing due; (4) *Set-off*: which is *limited to debts* of a readily calculable kind

and between the parties in the same rights; and which was first introduced in England by 2 Geo. II. c. 22; (5) "*Novatio*" which implies in Roman Law "substitution of a new obligation for the old one by mutual consent."

Release:—It is not always sufficient for a discharge of liability that the parties should agree to that effect. Roman Law required that every contract should be discharged in the same manner in which it was made. The English Law requires that a contract made under seal should be discharged in a similar way.

Mere agreement may sometimes effect discharge of a contract on the doctrine of consideration. When the contract is still *executory*, the parties may mutually release each other from its liabilities, and the same may serve as consideration for surrender of their rights. But if one party has already done his part of the contract, a discharge can be effected only by an agreement founded on some new consideration or by a deed, which is sometimes said to import a consideration. This rule, however, does not apply to discharge of promissory notes or bills of exchange, as they owe origin to the 'Law Merchant."

"*Non-performance*":—When one party does not perform his part of the contract, the contract is often extinguished. But sometimes acts short of non-performance have also the same effect; *e. g*, when one person by some act of his own disables himself from performing his duties, or declares that he is unwilling to do his share of the contract.

CHAPTER XIII.

PART II.

PRIVATE LAW: ABNORMAL.

297. *Illustrate by a diagram the variations of juristic personality and notice the important points in it.*

A. See Table viii. App. B. The important point to be noticed in the *variations* of *juristic* personality is that they include both *natural* and *artificial* persons.

298. *How are Artificial Persons created, and of what do they consist?*

A. They are created by—

(1) Charter, granted by the executive authority; (2) Special Law, and (3) General Law. They consist of (1) *natural* persons, or (2) *artificial* persons, (3) both *natural* and *artificial* persons.

* 299. *Mention the characteristics of "Artificial" Persons, and distinguish them from Clubs and ordinary Partnerships as also from Single Persons.*

A. An "*Artificial*" person is not merely the sum total of its component members, but something superadded to them; it may remain, although they one and all are changed. The property, which it may hold, does not belong to the members individually or collectively. Its claims and liabilities are its own; and its agent though appointed by the members does not represent them. An "*Artificial*" *Person* is by these grounds distinguishable from *Clubs* and *unincorporated trading Partnerships*.

Again, it is distinguishable from a *single Natural Person* on the grounds, that "it is invisible, immortal, and rests

only in intendment and consideration of law. It has no soul, neither is it subject to the imbecilities of the body." Its will is that of the majority of the members, and the same can be expressed only by means of an agent. It is incapable of many wrongful acts. Its capacity of holding rights and duties is limited by the purposes by which its existence is recognized. See also ques. No. 130.

300. *What is the utility of Artificial Persons? Give Holland's classification of the objects which such persons are meant to promote with examples.*

A. They form a subject, which perhaps more than any other human device, has contributed to the civilization of Europe and the freedom of its States.

Professor Holland has thus classified the *objects*, which the artificial persons are meant to promote with the following examples.

(1) Subordinately political; *e.g.*, Municipal Corporations. (2) Administrative; *e. g.*, Trinity House. (3). Professional; *e. g.*, College of Physicians. (4) Religious; *e g.*, Church Missionary Society. (5) Scientific and artistic; *e. g.*, Royal Academy. (6) Educational; *e.g*, University of Oxford. (7) Eleemosynary; *e g.*, St. Thomas Hospital. (8) Trading:—*e. g.*, Great Western Railway.

301. *What are "Quasi-Corporations?"*

A. The holders of some official positions are called "*Quasi-Corporations*," though not duly incorporated; *e. g.*, Church warders of a parish, guardians of the poor.

302. *What sorts of Partnership may, and what must, be registered according to English Law?*

A. Partnerships, having 20 partners, must be registered; but they may be or not registered, when they have only 7 partners.

303. *When does a Corporation become bankrupt, and how are its debts then paid?*

A. The debts of a Corporation are payable from its funds; but when the same fall insufficient, the company becomes bankrupt, "is wound up," or "goes into liquidation." Then its affairs are duly investigated by the proper court; and to make up deficiency of debt, it calls upon the partners to pay in case of limited liability the unpaid balance upon shares, and in case of unlimited Company for any further sum, which may be required for the purpose; and after the debts are paid, the existence of the Company comes to an end.

304. *What are the proprietory peculiarities of Artificial Persons?*

A. They are granted no license for acquiring estates, except for the purposes of religion, charity or other definite object; they are also not allowed full liberty in parting with them.

305. *Explain what do you understand by the Statutes of Mortmain.*

A. As religious Corporations used to acquire lands, it happened that large estates came to be accumulated in their hands; but this was opposed to the interests of the feudal Lords; and hence, they tried their best to get rid of these tenures, which they called as being "*in mortua manu*," or in dead hand by a number of laws Thus the laws meant for getting rid of the tenures, called as being in "*mortua manu*," are called the Statutes of Mortmain.

306. *What is the "Form" in which an "Artificial" Person may enter into a contract? Mention the exceptions, if any.*

A. It is by the imposition of its seal. But it is not necessary in the case of a trading artificial person, when

the act to which it applies, is incidental to its object; and in the case of a non-trading firm, when it is trivial or urgent.

307. *What acts may an Artificial Person do, and what does an infringement entail?*

A. Only such acts as fall within the *powers*, granted to it by the State. Any infringement makes the company liable to forfeiture of its charter.

308. *Explain "Universitates Bonorum" and "Personarum," "Corporation Sole," "a man's Jus" and "Universitas Juris."*

A. When a number of natural persons make up an artificial person, it is called "Universitates Personarum," or "Corporation Aggregate;" but when there is no natural person in it, and it is made up merely of a mass of property, of rights and duties, it is called "Universitates Bonorum" the most familiar example of which is a "heriditas," before it is accepted by the heir.

A "*Corporation Sole*," is a corporation (a mass or bundle of rights and duties) represented by a single individual; *e.g.*, the king, the parson of a parish, the priest of a Hindu idol. It is a fiction peculiar to English Law. The master of Pembroke College, and the Provost of Oriel College were each made *Corporation Sole* by Letters Patent of Queen Anne.

It applies to a devolution of the lands of the Crown or of a bishopric or of a rectory from the Sovereign, bishop or rector to his successor. It may hold lands, but not goods and chattels as such property is liable to be lost or embezzled, and may raise a multitude of disputes between the successor, and the executor which the law is careful to avoid.

A *man's Jus* implies in Roman Law, all the rights and

duties attached to him at one time taken as a whole. It is also called *Universitas Juris* in Roman Law, on the ground that all these rights and duties are attached to some individual capable of exercising them.

309. *What are the chief points in the status of a Natural Person? Notice the important legal points in each of them.*

A. They are :—(1) Sex, (2) minority, (3) patria potesta manus, (4) coverture, (5) celibacy, (6) mental defect, (7) bodily defect, (8) rank, caste, and official position, (9) race and color, (10) slavery, (11) profession, (12) civil death, (13) illegitimacy, (14) heresy, (15) foreign nationality, (16) hostile nationality.

1. *Sex* :—The rights and duties of women relate to Public Law.

2. *Minors* :—can hold and receive property, and are liable for duties and wrongful acts; but they can't execute *Will* or enter into any valid contract without the sanction of guardian and the court.

3. *Patria potestas* :—A "*filius familus*" could originally acquire no property; but in later times he could acquire "*peculium.*" He could enter into contracts, but could not borrow money.

Coverture :—The result of marriage is to unite the husband with the wife, and to constitute a partnership. The husband can alienate properties, make contracts and *Wills* which the wife can not do.

Celibacy :—The married and childless persons were punished before by forfeiture, either partial or total.

Mental defects are :—

1. *Lunacy* ;—A contract made by a lunatic is neither void nor voidable by him, if it was entered into by the other side without notice of his lunacy, and specially if it has been wholly or partly executed.

2. *Prodigality*;—persons, who are declared by competent courts to be prodigals are also subject to disabilities like *lunatics*.

3. Drunkenness is no status and its effects in avoiding contracts are similar to the effects of *duress*.

Bodily defect:—Deaf and dumb persons are unable to contract by "Stipulatio."

Office:—The King can do no wrong. No action can be brought against the King or any foreign Sovereign. Some officers are not held liable for the acts of their subordinates; and in the case of some other officers, limitation bars suits at an earlier period.

Color and race:—The disabilities of *race* and *color* do not exist in the American union as before.

Slavery:—A *slave* is incapable of marriage, cannot make any contract, and can not hold any property.

Profession:—A soldier has special privileges with regard to making *Wills*. A barrister and a physician in English Law can not sue for their fees.

Civil death:—When a person renounces the world and becomes an *ascetic e. g.*, an ascetic in Hindu Law; a person, when guilty of treason, felony, or attainder in English Law.

Illegitimacy:—An illegitimate child is incapable of inheriting as he is a "*nullus filius*."

Nonconformity:—Is a disability in the eye of Law.

Alien:—Since 1870, *Aliens* are allowed to hold freehold lands in the United Kingdom.

Hostility:—The contracts of an alien enemy with a British subject made during the war are void and his right to sue upon other causes of action is suspended during the war.

In English Law, a witness to a *Will* cannot take a *legacy*, and a man cannot marry the sister of his deceased wife. In

Roman Law, a wife cannot take a donation from the husband, and *vice versa*. But these incapacities from the limited extent of their operation can hardly be said to constitute a *status*.

CHAPTER XIV.

PART II.

PRIVATE LAW—ADJECTIVE LAW.

310. *What is "Adjective Law," and how is it better known? Explain what is meant by Procedure and Formal law.*

See Answer to question No. 121.

311. *What is the function of "Adjective Law?"*

A. In some exceptional cases, where an injured party is allowed to remedy his own wrong, it points out the limits within which self-help is permissible; and in all other cases, it declares the steps, which are necessary to be taken in order to set the court in motion for the benefit of the parties.

312. *Criticize the expression "law is concerned more with remedies than with rights"*

A. Rules of *procedure* occupied an undue importance in early society, and shared a great deal of attention in excess of their real importance. Hence, it has been said by some that "law is concerned more with remedies than with rights," but this expression is not correct, as it cannot be held that "a field consists in its hedge and ditch rather than in the space of land which these enclose."

313. *Whence is the true interest of the topic of Procedure derived?*

A. It is derived from (1) "the close connection which may be traced between its earliest forms and the anarchy which preceded them; and (2) the manner, in *which* the

courts have from time to time, effected the Substantive Law, under cover of merely modifying the *procedure.*

314. *What are the contents of the "Adjective" Law?*

A. They are rules of Law for selecting the (i) *Jurisdiction,*—which has cognizance of the matter in question.

(ii) Ascertaining the court which is appropriate for the decision of the matter.

(iii) Setting in motion the machinery of the court so as to procure the decision.

(iv) Setting in motion the physical force by which the judgment of the court, is in the last resort, to be *rendered effectual.*

315. *Describe the aforesaid rules in short?*

A. I. "*Jurisdiction*" :—A *remedial right* cannot be enforced anywhere. The place where it can be enforced depends on where it arose or where the parties reside &c. No divorce case is tried in England unless the husband be domiciled in it. No action with regard to land lies in any country unless it lies within it.

A case for breach of contract lies in England though the contract or breach of it was not made in it, and the parties do not reside in it. But a French court is, as a rule not competent to try it unless one of the parties be a French subject or domiciled in France.

II. "*Court*" :—All cases do not lie in all courts; administration cases are brought in England in the Chancery, and Salvage cases, in the Admiralty division, of the High Court of Justice.

III. "The *Action,*" *i.e.,* the "rules for setting the court in motion." The important stages of this operation are (1) Summons, or Citation, by which "the plaintiff brings the defendant into court;" (2) The "Pleadings" by which

"the plaintiff informs the court and the defendant of the nature of his claim, and the defendant states the nature of his defence;" (3) "*Trial*," "hearing," or "audience" at which "each of the parties endeavour to establish to the satisfaction of the court the truth of the view maintained by him of the question at issue;" (4) "Judgment," by which "the court decides the question in litigation;" (5) "The Procedure on appeal," when an appeal is possible and is resorted to by either party.

IV. "*Execution*:"—Whereby a successful party calls upon the officers of the court or other appropriate State functionaries to use such force as may be necessary in order to carry the judgment into effect.

316. *Shew how "Adjective Law" may be normal, or abnormal.*

A. "Adjective" Law, like "Substantive" Law, may be *normal* or *abnormal*; *i. e.*, artificial persons &c. may sue and be sued in a different way from that of ordinary persons; *e.g.*, an alien enemy cannot bring any suit in England. A peer is exempted from arrest; a clergyman is also similarly exempted while on his way to the place of divine service. A divorce suit may proceed although one party may be a lunatic.

317. *What are meant by the expressions "Extraneous Parties," and "Default?"*

A. In some cases, it becomes necessary for the court to order for addition of new persons as parties to a suit over and above the original parties; and these new parties are called "*extraneous parties.*"

Default:—"A maximum interval may be fixed between each step in an action, on pain of a decision being given "in default" against the party, who neglects to proceed in due course."

318. *Describe the main features of "Defence" in an action. Explain "Exceptio," "Confession and Avoidance" and a "Dilatory" and "Peremptory" Plea.*

A. The defence may (1) admit the plaintiff's allegations to be true, and contend that they do not in law afford any ground for action ; (2) deny the plaintiff's allegation or admit them to be true and set up other facts ; *e g.*, a release or limitation, which neutralize their effect. The exchange of pleading may be continued till the questions of dispute are precisely ascertained ; and this process may be continued orally, as in Germany, or in writing and print as in England.

A defence, which while admitting the plaintiff's allegations, sets up other facts, to neutralize their effect, is called in Roman Law "*Exceptio*" and in England as the plea of "*Confession and Avoidance.*" A plea is "*dilatory*" when it shews that the right of action is not yet available ;" and "*peremptory*" when it shews that the right of action does not exist.

319. *Describe the main features of a "Trial."*

A. In a *Trial*, questions of *law* or *fact* or *both* may arise. The parties are required to prove the questions of *law* by citing authorities, and the question of *fact*, by adducing proof, which may be *oral* or *documentary*. There are rules with regard to the admissibility of proofs and they are meant for the purpose of limiting the field of enquiry and excluding such evidence as has remote bearing on the issue. There are also rules with regard to the order in which the parties may adduce evidence and address the court, and also as to the right of the parties to appear in person or by pleader.

320. *Describe the main features of Execution.*

A. Execution in a civil cause is not "ex-officio ;" *i. e.*, does not take place except on the demand of a litigant party. A successful plaintiff may execute the final order of the court

but a successful defendant has no reason to do it except when he is given costs. The law in many countries recognize that some properties of the debtor should not be attached and he should be allowed to enjoy the ordinary comforts of life.

CHAPTER XV.

PART II.

PRIVATE LAW—REMEDIAL RIGHTS.

321. *What was the primitive remedy for "wrong?" How did it act, and what were its defects? How was it changed, and into what?*

A. "*Self-help*" was *primitive remedy* for "*wrong*" (invasion of right). Before the formation of society, the injured person had to rely on *self-help* for redress; and he was to be content with such damage or satisfaction as he could get from the wrong-doer, or derive from acts of revenge. *Defects* were (1) Self-help was seldom useful as remedy when the wrong-doer was stronger than the injured; (2) the injured party was the judge in his own case, and hence, he could be hardly impartial. *Change* :—With the progress of society, the rude *self-help* was *first* restrained by *rules*; and *next*, it was changed to *legal self-help*; and the injured parties are now to seek such redress as the Law grants through the *Courts*. In the early time, the injured people had generally recourse to sudden plunder, slaughter, attack, &c.; but as such was strongly objectionable, any step by *which* it could be avoided or adjourned was better; hence, the next stage was *regulated self-help*, and distress might be resorted to but only on some special grounds, and there were some safe-guards against abuse. Force may still be used for protection of life and

property ; but it must not be in excess of actual need ; and a man may abate a nuisance, provided he does not encroach upon another's right. The *last stage* is when people have got the Courts to resort to for redress

322. *What are the "Remedial Functions" of Law ? How does Aristotle describe the same ?*

A. Law protects rights, prevents wrongs, and grants redress. Aristotle says that the function of Law is "to guarantee that all shall enjoy their rights." Again he says "the Judge equalises." The main function of Law is "to restore the *status quo ante*, so far as possible."

323. *Compare "Antecedent Rights" with "Remedial Rights," so far as the person of incidence is concerned.*

A. *"Antecedent" Rights* are available *"in rem"* and also *"personam ;"* but *"Remedial" rights* are available *"in personam"* only. *"Lien"* and *"distress"* may be considered as modes of execution, by which true *"Remedial"* rights are made effective.

324. *What is the position of "wrong-doer" in the essential elements of Right ; and how is it so ?*

A. The *"Wrong-doer"* is a person against whom redress is available by the injured party ; hence, the wrong-doer is the *"person of incidence,"* and the injured person is the *"person of inherence."*

325. *Explain the terms "rectum," "directum," "recht," "right" and also the terms "delictum," "delict," "tort," "wrong." Explain also what is quasi ex delicto.*

A. The *first four* terms imply *straight forward conduct* ; and the *second four* terms imply *conduct* as is *"twisted out of,"* or "deviated from the right path," or "acts which are violations of rights." *Quasi ex delicto* implies "similar to or arising out of delict or tort."

326. *Give the points in which crimes differ from torts.*

Illustrate by reference to early history that the penal law of ancient communities is the law of torts and not the law of crimes (B. L. 1897.)

A. *Torts* are infringements or privations of the private, or civil rights belonging to individuals considered as in dividuals ; and remedies for the same are available in the shape of damages in civil courts. *Crimes* are breaches of public rights and duties, which affect the whole community considered as a community. Besides, it may be noted that in the *former*, the "person of inherence" is an individual, whereas the same in the case of the *latter* is the State. History shews that the far-reaching effects of acts become more and more visible with the advance of civilization ; and hence, the offences which are considered in the early state of a society as "*individual wrongs*," or *torts* are latterly con sidered as *crimes* ; *e.g.*, an *assault* was originally a *tort i. e.* a wrong done to the right of bodily safety of a person for which he had remedy in the shape of damages in civil courts ; but now, it is considered also to be a *crime*, as it is held that it is a threat against the safety of the society generally. Similarly, a *libel* is now not only the violation of the right of an individual not to be defamed, but is also considered as an offence tending to breach of peace.

327. *The more archaic the code, the fuller and minuter is its penal legislation. Explain and discuss this statement.* (B. L. 1893.)

A. See *Answer* to the previous question. In the early stage of society, the penal legislation comprises the law of tort, and not that of crime in the modern sense of it ; and hence, the above statement is true.

328. *How are the causes "investitive facts" of remedial rights related to the "antecedent rights ?"*

A The said causes of remedial rights are "infringements of antecedent rights"

329. *How are wrongful acts divided by Proof. Holland, and what are the laws with regard to each devision ?*

A. Prof. Holland divides them in *five* ways ; and they are as follow :—(1) According to the *state* of *will* of the *wrong-doer*, they are *voluntary*, *involuntary* or *negligent* ; in these cases, the enquiry into the state of mind of the wrong-doer is based upon "the conduct, which may be reasonably expected from a person of his class."

(2) According to the *state* of *will* of the *injured party* : —(1) when he waives his right, which makes the wrongful act to be no wrong ; (2) when he insists upon his rights, and opposes such acts ; (3) when he is induced to agree by means of fraud.

(3) According to the *means* by which they are effected ; *viz.*, (1) *physical violence*, (2) *words uttered*, and (3) *omission to carry out a contract.*

(4) According as actual loss to the injured party is, or is not essential for making the acts wrongful.

(5) According to the nature of right invaded.

NOTE.—The last-mentioned rule of division is to be preferred ; for, when it is known of what right a given wrong is an invasion, its other characteristics follow as a matter of course.

330. *Describe the Table of "Rights," and "Wrongs" as given by Prof. Holland.*

A. (A) Rights *in rem* include.

(1) Rights to Personal safety—the correlative wrongs being		assault, imprisonment.
(2) Family Rights ...	... Do.	Abduction, adultery with wife, seduction of a servant, or enticing away a servant.

(3) Right to Reputation or good name.	Do.	Defamation.
(4) Rights generally available ...	Do.	Nuisance, malicious arrest, or prosecution.
(5) Rights of possession ...	Do.	Trespass, Conversion and Detinue.
(6) Rights of Ownership of tangible objects.	Do.	Do.
(7) Rights of copy right, patent right and trade mark.	Do.	Infringements.
(8) Rights "in re aliena" ...	Do.	Disturbance of an easement, or conversion of a pledge.
(9) Rights to immunity from frauds	Do.	Deceipt.

(B) Rights *in personam* include—

(1) Family Rights... and their analogues	... Do.	Subtraction, adultery, refusal of due aliment, ingratitude on the part of a freed man or neglect by a vassal of his feudal rights.
(2) Fiduciary rights ...	... Do.	Breach of Trust.
(3) Rights of a reversioner	... Do.	Waste.
(4) Meritorious rights	... Do.	Refusal of merited reward.
(5) Rights against officials	... Do.	Neglect to perform duties.
(6) Rights ex contractu	... Do.	Breaches of contract.

331. *What is the law with regard to liability for acts of Servants ?*

A. The principal is *liable* for acts of his servants—(1) when they were ordered by him, or (2) they are within the scope of the servants' employment, though not ordered by him.

332. *Compare the Rights arising from breach of Contract with the same arising from "wrongs independant of Contract ?"*

A. (1) The *latter* class of rights is wider than the *former* class ; (2) In the case of the *latter* class only, mental and bodily suffering are taken into account in measuring the

amount of damages to be granted; and hence, they are *more difficult* to be proved than the *former* class.

333. *Explain "direct" or "general" damage and "indirect" or "special" damage".*

A. "*Direct*" or "*general*" damage implies such damage as is the "necessary and immediate consequence of the wrong;" "*Indirect*" or "*special*" damage is damage granted with regard to remoter consequences.

334. *Explain "actio personalis moritur Compersona.*

A. The above expression implies non-transferability by succession of remedial rights arising from "violation of a right intimately connected with individuality".

335. *How may Remedial Rights be extinguished?*

A. (1) By "*Release,*" *i. e.*, the person of incidence may give up his right of action by a deed or may give a "covenant not to sue," or may enter into "*accord and satisfaction,*" or he may also ratify the wrongful act;—(2) Bankruptcy of the person of incidence; (3) Set off; (4) Merger; (5) Estoppel of judgment (no matter actually tried between two parties by an issue can be again tried between them) which is conclusive evidence in favor of the person of incidence; (6) Extinctive prescription or limitation of actions, which deprives a remedial right of judicial remedy and thus, reduces it to a natural obligation, which still remains however capable of supporting a lien or pledge. Limitation was introduced in England in the Act of James I. for "quieting of men's Estates and avoiding of suits."

Note. Merger:—The giving of a covenant in the place of a simple contract does not *merge* or extinguish the debt, but it merges the remedy by way of proceeding upon the simple contract, the policy of law being that there shall not be two subsisting remedies by the same person against the same person for the same demand. So a judgment in favor of the plaintiff is a bar to the original cause of action. An award under arbitration

does not usually extinguish a remedial right unless followed by performance of the award.

336. *What is "Lispendens" or Lis alibi pendens?"*

A. They both imply the same thing and afford an instance where *remedial* right is suspended. The Courts refuse to try an action when the question at issue involved in it is also involved in another case, which is pending before a court of concurrent jurisdiction.

CHAPTER XVI.

PART III.

PUBLIC LAW.

337. *Explain the distinction which subsists between Public Law and Private Law.* (B. L. 1897.)

A. See Question No. 150. In Private Law, the State is present as *arbiter* of the rights and duties which exist between one of its subjects and another; but in Public Law, the State is present not only as *arbiter*, but also as *one* of the *parties* interested. The distinctions by which Private Law may be divided and subdivided do apply also to Public Law; for, in both of them, the distinctions of Substantive and Adjective Law, Rights "in rem" and "in personam," "Antecedent" and "Remedial" Rights, and also "Normal" and "Abnormal" Rights may be distinguished. But the application of these distinctions does not produce similar results in both cases.

338. *How does Bacon distinguish between "Jus publicum" and "Jus privatum?"*

A. Bacon describes *Jus privatum* as the "sinews of property," and *Jus publicum* as the "sinews of government."

339. *What has led to the doctrine that the State has no rights and duties? What are Holland's views on the same?*

A. In public Law, the union of the attributes of judge and party in one person, *i. e.*, in the State, has led to the view that the State, or the Sovereign has no rights and duties. Holland differs from this view. See Q. No. 122.

340. *To whom is due the conception of Public, as opposed to Private Law? How does the idea of Public Law as held in the continent of Europe differ from that as held in England?*

A. The conception of Public, as opposed to Private Law, is due to the Romans. The Romans as also the other continental nations of Europe include in Public Law the Law of Crime; but not so in England.

341. *Austin is said to be a revolter against the primary division of the field of Law. Explain it and shew what led to it.*

A. Among the distinctions which are traceable in Public as well as in Private Law, that between "Normal" and "Abnormal" Rights is among the most conspicuous. Of the two persons, who are necessary elements of every Right, one must always in Public Law, be the State; and as a State is an artificial person, it follows that numerous complexities arise in consideration of Rights. Mr. Austin was so struck with this peculiarity of Public Law as to identify the whole subject with the rules which define the different kinds of political *status*, and thus to deny its separate existence and to consider it as a branch of the Law of Persons. See Q. No. 152.

342. *Classify the various topics of Public Law, shewing what matters are dealt with each head.* (B. L. 1896.)

A. Public Law includes the following topics :—*viz.*, I.

Constitutional Law. II. Administrative Law. III. Criminal Law. IV. Criminal Procedure. V. The Law of the State considered in its quasi—private personality. VI. The Procedure relating to the State as so considered.

I. *Constitutional Law* :—is the Law, which ascertains the "political centre of gravity of any given State," or in other words, "defines the form of Government ;" and its *factors* are—1. to prescribe the order of succession to the throne or the mode of election of President ; 2. to enumerate the prerogatives of the King or other Chief Magistrate ; 3. to regulate the composition of the council of State, the mode of its formation, powers, duties, &c., to prescribe the powers and duties of ministers, and also to make rules with regard to formation and powers, &c., of Government officers and offices ; 4. to make rules with regard to armed forces and royal navy ; 5. to distinguish between the legislative, judicial and executive functions ; 6. to regulate the relations between the State and the Church ; 7. to regulate the conduct of Judges and their immunities ; 8. to regulate the relations between the Parent State and Colonies ; 9. to define the extent of jurisdiction of a State ; to prescribe rules with regard to "naturalization," and the rights and duties of the citizens towards the State.

The Sovereign part of the State is *omnipotent* ; and hence, as it is the source of all law, its acts can never be illegal ; and an act is said to be "unconstitutional," when it exceeds the bounds of authority.

The constitution of England consists of an unwritten body of customs ; but it may be also the written enactment of fundamental principles, as in America and in many States in the continent of Europe, in which case, innovations become less easy.

II. *Administrative Law :*—is that branch of the Law, which considers the various organs of the sovereign power as in motion, and prescribes the manner of their activity in detail. In this sense, "Administration" is defined as the "exercise of political powers within the limits of the constitution." It is the widest sense in which it is used ; and in this sense, it includes—topics with regard to (1) Legislation, (2) Executive Government, (3) Administration of Justice, (4) Management of property and business of the State, (5) the Working in detail of the machinery by which the State provides for its own existence and for the general welfare. But "Administrative Law" in the specific sense of the term refers to only the 2nd and 5th of the above subjects, and includes the following topics ; *viz*,—1. Collection of Revenue ; 2. Management of the Army and Navy, Ship-building and Fortifications ; 3. Government of the Colonies and Dependencies ; 4. Collection of Statistics, including births, deaths, marriages, conveyances and mortgages of land, custody of wills, naturalization of aliens, and grant of charters to corporations ; 5. Promotion of well-being of the society, by prevention of evil or production of good.

III. "*Criminal Law* :"—relates to the function of the State as "the guardian of order." As such, the State is required to prevent and punish all injuries to itself and also breaches of the rules, which it lays down for the common welfare.

This law is of modern origin. Formerly, many acts including even murder, theft, &c., were left to be regulated by Private Law ; and the State punished only the offences against itself such as treason, rebellion, &c. But in course of time, those acts came to be considered as subversive of the best interests of Society ; and hence the State as its protector has undertaken to deal with them.

It is divided into *two* parts; *viz.*, Substantive and Adjective; and the *former* is again divided into—(1) *General Law*, dealing with the nature of criminal acts, responsibility of wrong-doer on the ground of negligence, facts which negative responsibility—*e. g.* tender age, compulsion, idiocy, lunacy, or drunkenness, facts justifying criminal act as consent, self-defence; persons entitled to bring criminal action, list of punishment, limitation, abetting crime, criminal attempts and cumulative sentences. (2) *Particular Law*—is divided again into criminal acts against the State, and such acts directed against individuals.

IV. The "Criminal Procedure":—is divided again into "*simpler*," which deals with simple offences, and "*more solemn*," which deals with serious offences. The main features are—

(1) Choice of jurisdiction, (2) selection of the court, (3) procedure, relating to summons or warrant of the accused, preliminary enquiry, pleadings, trial, grant of the securities, pending trial, verdict and judgment, execution, and procedure on appeal

The "public prosecutor" is the person who is entrusted with the work of bringing the criminal to justice. In England, this work is left to the industry of the injured person.

V. "*The Law of the State considered in its quasi-private Personality*:"—Every State, as a juristic person, has many rights and duties with regard to individuals, as subjects or aliens. It is often owner of many properties, moveable and immoveable, and manufacturer and trader of many articles. It has often to enter into contracts, and it inherits under a *will* as well as *ab intestato*. Its rights and duties, as such are different in many respects from those of a private citizen; *e. g.* liability for acts of agents and servants and limitation and prescription of rights.

VI. "The Procedure relating to the State as so considered":—

As the State is the "source of all rights," special rules are provided for as to how and when it may sue, or be sued against. The nature and character of these rules vary in different countries.—The subjects have got no such special rights.

In England, redress against the State is obtained by a "Petition of Right," which can be filed in any superior court, in which it would be cognizable, if "between subject and subject;" and the State is held liable for costs, like an ordinary litigant; so far as possible

The State may bring such common law actions against its subjects as are consistent with its royal dignity; but there are also some prerogative modes of process as "inquest of office," "writ of extent," a writ of "scire facias," or an "information" exhibited by the Attorney General in the Queen's Bench Division of the High Court.

CHAPTER XVII.

PART IV.

INTERNATIONAL LAW.

343. *What is "the Law of Nations," "International Law" "and Jus inter gentes?" Compare these expressions, stating to whom or what they are due?*

A. The body of rules regulating the rights in which both of the personal factors are States is called "the Law of Nations," "International Law," and "Jus inter gentes."

Comparison.

The *first* expression was due to Richard Zouch, a pro-

fessor of Oxford ; and it is a loose one in comparison with the other two expressions, which are more appropriate. The *second* expression was due to Jeremy Benthan, and the *third* one to *Roman Law*.

344. *Compare "International Law" with "Ordinary Law," and "Ordinary Morality." Shew how International Law is not Law in its strict sense.*

A The "*International Law*" differs from "*Ordinary Law*" in being unsupported by the authority of a State ; and hence, it is not *Law* in its strict sense It differs from *Ordinary Morality*, in being rules for *States*, and not for *individuals*.

345. "*International Law is the vanishing point of Jurisprudence.*" *Discuss this, and give reasons for your agreement or disagreement with the dictum.* (B. L 1899.)

A. *Jurisprudence* deals with *Positive Law*, creating rights and duties. Now, a legal *right* must have *four* elements, *viz*, a person of inherence; a person of incidence, an object and an act. When both the persons of inherence and incidence are private persons, the Sovereign enforces the rights and duties ; and the law dealing with them is called *Private Law*, or Positive Law strictly so called. But when one of these two persons is a State, the Law dealing with them is called the *Public Law*, which is not strictly Positive Law in as much as the State is a party, and the same State enforces the law. Now, in the case of International Law, both these persons are States ; and hence, the law dealing with them is in no way *Positive Law*, as there is no arbiter except public opinion ; and as it tends to become true law by the assimilation of States into a society, it ceases to be itself, and is changed into the Public Law. Hence, it is said properly to be the vanishing point of Jurisprudence.

346. *Between what sorts of States can "International Law" subsist?*

A. It can subsist only between States, which, on the one hand, sufficiently resemble one another, and are closely enough knit together by common interests, to be susceptible of a uniform pressure of public opinion, while, on the other hand, they are not so politically combined as to be controlled by the force of a central authority.

347. *How many times have the above conditions of political independence and social sympathy been realized in the history of the world, and in what States?*

A. Only twice; *first*, between the various cities of Hellas; and *second*, between the various States of modern *christendom*."

348. *Compare "International Law" with "Municipal Law" on the point of supreme authority.*

A. Just as "Municipal Law" is supreme over all questions of private or public right, arising within the jurisdiction of any given state, so the "International Law" is supreme over "all questions which arise between one State and another."

349. *How is "International Law" said to be a branch of "Public Law?" and why is it analogous to "Private Law?"*

A. As the *former* is concerned with the relations of States, it is said to be a branch of "Public Law." It is analogous to "Private Law" as the personal factors in a right in the case of both of them are always similar, unlike the public law; for, as the parties in Private Law are two individuals, so in International Law, they are two States.

350. *What is the essential characteristic of International Law? Illustrate how is confusion caused by authors, who do not grasp it?*

A. It is the fact that the personal factors in a right in the

case of "International Law" are two States and not two individuals. Some authors failing to grasp it have caused confusion by speaking of Sovereigns or Ambassadors, as international persons, and have treated of States, as "capable of having international relations with individuals;" *e. g.*, the seizure of a blockade runner as an exercise of authority by a belligerent State over a neutral subject.

351. *What is meant by the expression "Family of Nations?" Illustrate the meaning.*

A. It means an aggregate of States, which as the result of their historical antecedents, have inherited a common civilization, and are at a similar level of moral and political opinion; *e. g.*, the term may include the Christian nations of Europe and America, with the Ottoman Empire, admitted to the concert European by the treaty of Paris in 1856. All States falling within this charmed circle to which Japan has also established her claim to be admitted are equal, and no State which is outside of it, can be regarded as a "normal international person."

352. *What topics of International Law are analogous to those of infancy, coverture and tutelage in Private Law?*

A. The topics of semi-sovereignty and protection.

353. *Compare "International Law" with "Private Law" on the points of birth, majority, and death?*

A. As persons in "Private Law" are said to be born, to attain majority, and to die, so the States in "International Law" may be said to "come into existence, obtain full international recognition, and cease to be in existence."

354. *What is the origin of States?*

A. A new State arises, either where no State existed before; or derivatively, "by separation from a previously existing State" with or against its consent.

355. *How do States terminate? Give examples.*

A. "Only by the merger of one State in another;" *e. g.*, Poland ceased to be a State, when it was divided between the neighbouring States.

356. *Shew how there may be "antecedent," "remedial," "in rem" and "in personam" rights in International Law?*

A. The rights of a State may be "antecedent" "as subsisting independently of any wrong-doing," or "remedial," as given by way of compensation for an injury sustained. Again, rights of the *former* class may be available against one State, when they are said to be "*in personam*," or against all States, when they are said to be "*in rem.*"

357. *Show how may "antecedent" International rights "in rem" be divided.*

A. They may be divided into (1) safety, (2) reputation, (3) ownership, (4) jurisdiction, and (5) protection of subjects in foreign countries.

358. *To what law do rights of Equality, Legation, Negotiation, and Treaty-making belong?*

A. These rights belong to the law of International States, as they are mere corrollaries from the conception of a Sovereign State as an artificial person.

359. *Notice the important points of Rights "in rem" of a State in International Law.*

A. They are—

(1) Right of a State to exist in safety; and when this right is violated, the remedial right of self-preservation arises.

(2) Right of a State to *good name*: for, upon it depends its glory, for which other States desire its friendship, favor its enterprizes, and do not desire or venture to offend it.

(3) *International Ownership*, or "dominium" refers to the "territory" which is essential to the existence of a State,

and in which are included the rivers, ports, harbours, creeks and bays. The ownership of the territory may be acquired originally, or derivatively. A State "may also have rights over the territories of neighbours," which are called "Jura in re aliena," by virtue of "feudal superiority, mortgage or servitude."

(4) *The right of Jurisdiction*, called "impurium," is exercisable, like "dominium" within the territory. The jurisdiction of a State over its subjects residing in another State, is a subject of *Public Law*; but the jurisdiction of a State over aliens, residing in its territory is a subject of International Law, which "obliges the State to which such aliens may belong to acquiesce in their punishment.

360. *Compare "Dominium" with "Impurium."*

A. Both the above rights of a State are exercisable within its own territory; but for the purpose of "impurium" or "jurisdiction," territory is artificially extended; *e. g.*, over "ships carrying on its flag on high seas," and also to all ships (for some purposes) not being ships of war, "which pass within three miles of its coasts;" or artificially limited, *e. g.*, foreign Sovereign, ambassador, and ship of war, though the territory of State is considered as "outside of it;" and "a nation sometimes assents even without treaty to exercise a jurisdiction over its own subjects, who are residents in barbarous countries."

In the high seas, all States enjoy con-current jurisdiction for suppression of piracy.

(5) A State may insist upon a right that his subjects should not be mal-treated and oppressed in other States, where they may go and reside for business purposes.

361. *What are Antecedent Rights "in personam" of States?*

A. They are such rights as one State may have against another State. They rest upon contract which in the case of State is called "Treaty."

362. *Compare a "Treaty" with a "Contract."*

A. The analysis of a "Contract" shew that it consists of *six* essential elements; but a "Treaty" requires only the *first five* elements, and not the *sixth* element; *viz.*, "a solemn form or some fact which affords a motive for the agreement." Besides, a "Treaty" is not voidable like a "Contract" on the ground of duress; and the acts of agents in "Treaty" are not so much binding as in the case of "Contracts."

363. *How may "Treaties" be divided?*

A. They may be

(1) Principal, and (2) Accessory. The *former* may again be subdivided into treaties of peace, alliance, cession and the like; and the *latter*, into (1) mortgage, and (2) security.

354. *What is the "right of Legation?" Criticize it.*

A. The "right of Legation" implying the right of *negotiation* or of sending an embassy refers to the right of agency. But there can be no such right, as no nation can insist that other nations should accept its proposal or receive its ambassador.

365. *To what class of ordinary law is the Law with regard to inviolability and extra—territoriality of diplomatic personages analogous?*

A. They are analogous to "that branch of Public Municipal Law, which describes the safeguards provided for the protection of Government officials in the execution of their duties."

366. *How do the Remedial International Rights vary?*

A. They vary according to the nature of the right violated; *e. g.*, apology, salute to the flag of State &c. are remedies for

insult to dignity; restitution of property, cession of territory, and money indemnity are other remedies.

367. *What is the Adjective Law of Nations, and what does it correspond to?*

A. It is such law as prescribes the procedure by which Substansive Law may be lawfully enforced. It corresponds to the Law of Nations in time of war.

368. *What are the Laws of "Belligerency" and "Neutrality?*

A. The Law of Nations in time of war, "so far as it affects the disputant parties only," is called the Law of "*Belligerency*;" and the same "so far as it regulates the relations of the disputants to parties not engaged in the struggle" is called tne Law of "*Neutrality*."

369. *How may redress be obtained for violation of an International Right?*

A. In a *friendly* way, by (1) negotiation, (2) arbitration, and (3) mediation of other States: or by *force*.

370. *What is "Retorsion de troit?"*

A. It is "refusal to perform similar good offices"; and it is a remedy in those cases where the rights violated are those of acts of mere comity.

371. *What are "Reprisals?" How are they divided?*

A. "*Reprisals*" are remedies short of actual war, for violations of rights, when those rights are such as are allowed to be "Stricti Juris." They are "*special*;" *e. i.*, exercised by "injured individuals against the fellow-citizens of those by whom they had been injured;" or "*general*;" *i. e.*, allowed by the government or a State to its subjects generally or to its public forces. The *Reprisals* take place in time of peace.

372. *Compare "War" to an "Action."*

A. Actual *War* may be considered as "the litigation of two nations."

373. *What is the effect of the out-break of War?*

A. On the out-break of War, "some of the subsisting treaties are *ipso facto* abrogated, while others remain in force.

374. *To what of ordinary Law, do the rules of Neutrality correspond?*

A. The rules with regard to "Neutrality" correspond to the rules in ordinary Law against "*Champerty*," or "Maintenance," or against interference with the course of criminal justice.

375. *What are the rules relating to Neutrality in International Law?* (B. L. 1901.)

A. The *rules* may be divided into *rights* and *duties* of Neutrals. The *rights* are as follow; *viz.*, (1) To have the right to exercise sovereignty within their territory, and so to prevent or cancel, all belligerent acts, either in the territories or in the adjacent waters, to exercise there the right of assylum, and to prohibit the exercise there of any belligerent jurisdiction; (2) To have their public ships retained inviolable; (3) To have the persons and property of their subjects secure, within the territory of a belligerent, subject to certain exceptions such as the "jus augariae;" (4) To have the right to continue diplomatic intercourse with the belligerents; (5) To recognize under certain circumstances a revolting population as a defacto belligerent, or even as a new Sovereign State.

The *duties* of *Neutrals* are as follow;—*viz.*, (1) to have some restraints on free action; *e. g.*, they must not furnish troops or armies or money or allow passage to either of the contending parties, or open their ports so as to further their objects; (2) They must not allow their territories to be used as the base of operations by either of the contending parties;

(3) They are to forego their ordinary rights of protecting their subjects, and to allow them to be interfered with and their property to be confiscated by the belligerent, who has grounds to complain of their conduct.

CHAPTER XVIII.

PART V.

THE APPLICATION OF LAW.

376. *What is meant by "the Application of Law?"*

A. It is a department of Jurisprudence, which deals with the rules for ascertaining what law is to be applied, "when a set of facts has to be regulated in accordance with law."

377. *What questions arise in the "Application of Law?"*

A. *Three* questions arise; *viz.*,—(1) the Court of what State has jurisdiction to apply the law to the facts; (2) what *law* will it apply; (3) how is it to be "interpreted."

378. *What is meant by the Law of "Forum," and the Law of "Lex?"*

A. The law, which deals with the *first* question is called the law of "*Forum*," and the law, which deals with the aforesaid *second* question is called the Law of "Lex." In other words, the Law of "*Forum*" determines "in the Court of what country the dispute can be decided," or what Court has jurisdiction to try the case "ratione territorie."

379. *What are the possible "Fora" or Courts in which proceedings may be taken?*

A. They are the Courts of (1) the country "in which the plaintiff, or the defendant, is domiciled, or to which he owes allegiance, or in which the defendant happens to be;" (2) the country "in which the object in dispute is situated;"

(3) the country "in which the juristic act in question ;" *viz.*, —marriage, sale, &c., took place; (4) the country "in which the wrongful act in question took place"; (5) the country "in which a contract was to produce its results ;" (6) the country "in which plaintiff chooses to commence proceedings."

380. *By what names are these Fora called in Latin? Which of them has gained general currency, and why?*

A. These *Fora* are respectively called, as—(1) *Forum ligeantiæ* or *domicilie actoris* ; (2) *Forum ligeantiæ*, *domicilie*, or *presentiæ rei* ; (3) *Forum reisitæ ?* (4) *Forum actus*, including contractus ; (5) *Forum delicti commissi* ; (6) *Forum litis motæ* or *fortuitum.*

Of these, *Forum* (*domicilie*) *rei* "has obtained general currency, by means of the long prevalence of the maxim "actor sequitur forum rei."

381. *Give some examples of the questions, which arise as to Forum?*

A. The English Courts decline to try a case of *Divorce*, unless the husband be domiciled in England ; it tries, however, a case for breach of Contract, "wherever made and between whatever parties," while the French Courts do not try it "unless one of the contracting parties be a French subject or domiciled in France."

382. *What are the circumstances which affect the Law of "Lex," or the solution of the question as to what is the applicable "Lex" in a particular case. State also the rules in each case.*

A. They are as follow:—

(1) *Concentricity* ;—*e. g.*, a city may be governed by its *own* laws, by the laws of the *kingdom* to which it belongs, and also by the laws of the *Empire* to which the kingdom appertains ; and when these laws differ on any point, the question arises what law will govern a case. The rule on this

point is, that the "nearer and narrower law," and not the *remoter* and *wider* law, is to be applied.

(2) *Time* :—Some legal relations; *e. g.*, acquisition of right by prescription, or under a Will arise from a number of facts occurring through a prolonged period; and in their cases it becomes difficult to ascertain what is the actual law to be applied; and the general rule that a law is prospective unless the contrary is clearly expressed is not sufficient for the purpose. Questions of this nature relate to the discussion of the *temporal limits* of the application of law.

(3) *Race* :—Law is sometimes addressed to the followers of a religion or to the members of a tribe, and not to the inhabitants of a country; and it does not pay any regard to the place or country, in which they may remain; *e. g.*, the Hindu and Mahomedan Laws, are said to be *personal* laws.

(4) *Place* :—The notion of a "*territorial law*" is European and modern. A Sovereign has right to regulate all facts occurring in his territory exclusively by its own law; but it happens that an act is completed partly within, and partly outside of his territory and is done by persons who are not settled in his country, but merely pass through it; and in such mixed cases, it becomes often inequitable to apply the territorial law rigidly; and hence, a different set of rules is required.

383. *What are the different Names for the rules for selection of territorial law?*

A. They are:—

(1) Statutes, (2) Conflict, (3) Extra territorial effect, (4) Application, (5) Comity, (6) International Private Law, (7) Private International Law.

384. *What is the conflict of laws? Five men might be seated at the same table in a Calcutta hotel all governed by different laws.* (B. L. 1870).

A. See Qs. No. 382 and 386.

385. *What are the objections with regard to the above names?*

A. *Statutes*:— The term "Statute," implies an attempt to resolve a "legal into a grammatical question," and is indeed obsolete. Of the other phrases, Private International Law is distinctly misleading, while the rest seem to be rather inadequate than erroneous.

386. *In what sense is it true or untrue that "Conflict of Laws" takes place?*

A. It is true in ths sense, that though the laws of different States do not strive for the mastery, "yet they present themselves to the legislature or the Court as competing or conflicting;" and hence, "there is a competition of opposite conveniences," though each State is free to adopt its own or a particular foreign law for the decision of any given question. It is untrue in this sense that "the authority of a domestic can never be displaced by that of a foreign law."

387. *What is the objection against Extra-territoriality?*

A. It is not correct to ascribe an extra-territorial supremacy to any system of law, as it is inconsistent with the absolute sovereignty of each State within its territory.

388. *What is meant by Comity? Why is the theory of "Comity" attacked, and how may it be defended?*

A. "Comity," implies *Courtesy*. The theory of *Comity* is attacked on the ground that a Court in applying a particular law is guided not by *courtesy*, but by *legal principles*; but it may be defended on the ground that, a State, in making its law, is guided by "considerations of equity, accompanied by some expectations of reciprocity."

389. *Criticize the expressions (1) "Application of Law," (2) International Private Law, (3) Private International Law.*

A. The (1) expression embraces all necessary topics; and the only thing that can be said against it is that it is *too wide.* The (2) expression is a dangerously ambiguous term, but is capable of being understood in the sense of "Application of Law" The (3) expression is "wholly indefensible," as it should mean "a private species of the body of rules which prevails between one nation and another."

390. *Describe the possible "Fora" as regards the Criminal branch of Public Law?*

A. They are—

(1) *Forum ligeantiæ, i.e.,* that of the nation of which the offender is a subject;

(2) *Forum domicilii, i. e.,* that of the domicil of the offender;

(3) *Forum civitatis laesæ, i. e.,* that of the nation injured;

(4) *Forum deprehensionis,* or *fortuition, i. e.,* that of the place of arrest or detention of the offender;

(5) *Forum delicti commissi, i. e.,* that of the place where the offence was committed.

391. *What are the four theories regarding competent Forum? Criticize them.*

A. (1) "*Territorial theory of Jurisdiction*":—asserts that each State may punish offenders against its own criminal law, be they subjects or aliens, if the offence is committed "within its territory or on board of its ship against its criminal law" This is a true proposition, but is not sufficient; for, as soon as the criminal escapes from the territory, the State is unable to punish him; this insufficiency is partly cured by treaties of Extradition, which return the offender to the "*forum delicti.*"

(2) "*Personal theory of Jurisdiction*":—asserts that each State has a right to punish its subjects for an offence against its laws committed while within the territory of another State.

This theory is very variously applied by different nations ; *e.g.*, the continental States punish their subjects for offences committed abroad againts the Government or coinage of the country, while England punishes for murder, man—slaughter and bigamy.

(3) " *Theory of Self-preservation* :"—also called "theory of Quasi-territorial," asserts that a State may punish offences, though committed outside of its territory and by aliens ; but this right is usually asserted with regard to offences against the Government, or its public credit.

(4) Theory of " *General Supervision*" or of " *Cosmopolitan Justice* " :—asserts that every State has right to punish a criminal, who happens to come within its power.

This theory has long found favor in respect to pirates, on the ground that they do not recognize subjection to any political authority.

392. *What are the results of the adoption of one or other of these theories by one State upon other States ?*

A. When a state exercises jurisdiction under any of these theories, it recognizes indirectly that other States doing similar acts would be also justified. Besides, when it recognizes concurrent jurisdiction of several States, it may not consider the decision of another State as formal and binding.

393. *How does the theory of " Comity" apply to " Criminal law ?"*

A. No State undertakes to administer the criminal law of another State ; and hence, the theory of "Comity" has no place in the trial of Crimes."

394. *How is Public Law interpreted ?*

A. In the same way as Private Law.

395. *Shew how is Private International Law neither Private, nor International Law ?*

A. It is neither *Private, nor International Law*, as it differs in essential points from both of them.

396. *Notice the important points of Application of Law with regard to International Law ?*

A. (1) No question of "*Forum*" arises in International Law, whose essential principle is that each nation is judge of its own quarrels, and executioner of its own decrees." *

(2) The question of "Lex" does arise, but not in a way analogous to *Municipal Law* It arises in this way, as to whether a set of facts falls under International Law, or whether the contending nations are members of the Family of Nations, when only International Law will apply; and otherwise "views of national interest tempered with morality" will apply.

(3) The rules of interpretation apply to International Law as to Private, and Public Law.

396*a*. *What part does interpretation play in the Application of Law ? When is it said to be "legal," or "doctrinal," "authentic" or "usual."*

A. It is necessary to construe the law properly so that the correct law may be applied to every case. Interpretation is thus a third though a subordinate topic of the application of law. It is "legal" when it rests on the same authority as law itself; or "doctrinal," when it rests upon its intrinsic reasonableness. Legal interpretation is "authentic" when it is expressly provided by the legislator or "usual" when it is derived from unwritten practice.

APPENDIX A.

CALCUTTA UNIVERSITY B. L. QUESTIONS WITH ANSWERS.

1870.

1. See Q. 1.

2. (*a*) Define the following words :—"sanction," a "sin," a "vice," and a "crime." (*b*) What is a law in the proper sense of the word, and in what other senses it is used ?

A. (*a*) For "sanction," see Qs. 53 and 118. For "sin," "vice" and "crime," see Qs. 25,29 and 326 respectively (*b*) See Q. 19, 19 B. and 32.

3. What is according to Mr. Maine the essential difference between ancient and modern society with reference to the legal status of a member of it.

A. The difference lies in this that in ancient society, the legal right was supposed to rest in a *family*, and there was no idea of *individual* right which is the characteristic of the modern society ; for, now unlike before each individual is capable of entering into legal relations with others. The unit of ancient society was a *family*, whereas in *modern* society it is an *individual.*

4. What advantages resulted from the adoption of written Codes in early societies ?

A. The advantages were *two-fold* ; *viz.*—(1) protection from fraud by the privileged class ; and (2) protection of national institutions from corruption and debasement.

5. Explain the terms "Jus Gentium," "Natural Law," "Law of Nature and Nations," and "Social Contract."

A. See Qs. 25, 42, 60, 63 and 343.

6. See Q. 75.

7. Define fully "allegiance," "alien." A war breaks out between England and France. How may it affect Hindus who have had dealings with French merchants resident in France ?

A. "Allegiance" is the true and faithful obedience of the subject due to his sovereign."—(Sir. E. Coke). It is defined by Blackstone as "the *tie* or *ligamen* which binds the subject to the sovereign in return for that protection which the sovereign affords the subject." An "Alien" is a native of a different country who owes no *allegiance* to the king of the country in which he resides. The Hindus will be so affected that their dealings with French merchants will have to be stopped unless they are permitted to continue the same by England.

8. See Q. 384.

9. Give the rules which are laid down for the interpretation of legislative enactments.

A. The rules are (1) the literal and grammatical sense of the words used should be taken ; (2) when the words used are indeterminate or ambiguous, the intention of the legislature as indicated in the reason of the statute by the statute itself, or in its history of the mischief to be remedied, or in the clear enactments of other statutes made by the same legislature should be enquired into. Statutes are supposed to be carefully worded ; and hence, departure from the literal and grammatical sense of the words is not allowed when they are capable of any determinate and clear meaning.

10. What two fundamental maxims of the English constitution virtually vest the supreme power in the House of Commons ?

The maxims are—(1) the members of the House of

Commons are elected by the people ; and hence, a tacit rather than express trust is imposed upon them ; (2) the trust so imposed is enforced by nothing but moral sanctions.

11. See Q. 44.

12. See Q. 59.

1871.

1. See Q. 60.

2. (*a*) Give Blackstone's definition of Municipal Law. (*b*) Distinguish between 'rule,' 'sentence,' and 'compact.' (*c*) What is meant by the *sanction* of a law ?

A. (*a*) Blackstone defines Municipal Law as "a rule of civil conduct prescribed by the supreme power in a State whose authority to prescribe it has been referred to the contract implied in civil society, that its members should submit to certain restraints of their natural freedom in order to secure to each the enjoyment of defined liberties and advantages." (*b*) *Rule* implies simply an *order*, and when it is an order of a court, it may be an intermediate or final order, passed upon one of the parties in a case or upon a third person. But *sentence* implies final order of court passed upon one of the parties in a case, who is found to be the accused person. *Compact* implies mutual agreement. (*c*) See Qs. 53 and 118.

3. (*a*) Explain "sovereignty and legislature are convertible terms; one cannot subsist without the other." Wherein is lodged the sovereignty of the British constitution ? (*b*) Where lies the power of legislature in British India and how has it been conferred ?

A. (*a*) "Sovereignty" implies (1) independent of all control from without, and (2) paramount over all actions within; in other words, a sovereign is such a person or body who is to

be obeyed by all persons within his territory, and who is independent of all control from without. Similarly, the term "Legislature" also includes these *two* ideas; and hence, these two terms are said to be convertible. The sovereignty of the British Constitution rests in the King and in the two Houses of Parliament combined. (*b*) See Q. 106.

4. (*a*) What is Austin's definition of "law?" (*b*) What should be the object of legislation? (*c*) Austin says "customary laws are imperative." Explain his meaning. What adverse opinions on this subject does he combat? (*d*) With what does he say, the Science of Jurisprudence is concerned?

A. (*a*) He states that "law" in its proper and literal sense implies "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him." (*b*) See Q. 107. (*c*) See Q. 77. Science of Jurisprudence, he says, is concerned with Positive Law, or law strictly so called, *i.e.*, law set by political superiors to political inferiors.

5. What is the British Parliament? How is it summoned? How dissolved? What is the longest term that it may sit? What are the exclusive privileges of the House of Commons, and what are their effects on its power?

A. The British Parliament consists of a King or Queen answering to the generic description as contained in the Act of Settlement, and also the *Peers*, *i.e*, members of the House of Lords, as well as the *Commoners*, *i.e.*, the members of the House of Commons. The King has the power of summoning the Parliament; and in doing so, he is to send a special word to each of the *Peers*, and a general writ to the Sheriff for the Commoners. It is also dissolved at the will and pleasure of the King. The longest term for which it may sit is 7 years. The exclusive privileges are (1) freedom of speech, and (2) freedom from arrest which have the effect of making it power-

ful and useful as the voice of the people can then only be truly and correctly represented.

6. It is said to be the Sovereign's prerogative to issue proclamations. Give an instance of a proclamation by her Majesty in India. What is necessary to the validity of proclamations.

A. The proclamation of 1858 is an instance. The proclamations are valid when they are based upon and enforce the laws of the realm.

7. What is the difference in the tenure of office by the Judges of the Supreme Courts at Westminster and by the Judges of the High Courts in India.

A. The *former* Judges are appointed by the Parliament; but the *latter* are appointed by the King of England.

8. (*a*) What are personal rights according to Blackstone? What are the principal statutes which secure to her Majesty's subjects personal liberty? (*b*) Distinguish between "crime" and "civil injury."

A. (*a*) Personal rights consist of the right of personal security, and the right of personal liberty. The right of personal security consists in a person's free and uninterrupted enjoyment of his life, limbs, body, health and reputation. The right of personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct without imprisonment or restraint, unless by due course of law. The principal statutes are :—(1) Magna Carta, (2) Petition of Rights, (3) Habeas Corpus Act. (4) Confirmation of charter. (5) Bill of rights. (6) Act of settlement. (*b*) See Q. 326.

9. (*a*) The Indian Succession Act (S. 4) says, "No person shall by marriage acquire any interest in the property the person he marries." How does this differ from

the English Law? (*b*) To what classes does the Indian Succession Act not apply?

A In English Law, the husband's rights over the property of his wife are very meagre from the passing of the Married Woman's Property Act; but he could before the said Act have rights to the leasehold as well as freehold of his wife and personal chattel of the latter became absolutely vested in him. (*b*) See S. 331 of the Suc. Act. It does not apply to Hindus, Mahomedans and Budhists. Native Christians in Coorg, Khasias and Syntengs is Assam, and Jews in Aden have also been exempted from the provisions of this Act by virtue of S. 332.

10. (*a*) Upon what does the descent of real property in India depend, and why? (*b*) In what respects are the laws and usages of Hindus and Mahomedans preserved to them by law?

A. (*a*) The descent to real property in India depends on the principle of consanguinity based on religious grounds. (*b*) In respect to succession, inheritance, marriage, or caste or any religious usage or institution.

11. Distinguish between a personal and territorial law. To what class does Hindu Law belong? Illustrate your answer.

A. A *personal* law is such law which applies to the followers of a religion, or to the members of a tribe without any regard to the country in which they may reside; *e.g.*, Hindu and Mahomedan Law. On the other hand *law*, which applies to all the inhabitants of a country without any regard to difference in religion or tribe is *territorial* law; *e g.*, Indian Penal Code.

12. "A corporation aggregate must in general contract by deed and cannot bind itself by parol." What is a corporation aggregate? Explain this rule and state the exceptions.

A. A corporation aggregate is a combination of a number of natural persons for the performance of a common function. The rule is that a "corporation aggregate" cannot make any binding oral contract, but must make every contract by deed; and this is done by the imposition of its seal. The exceptions are (1) in the case of a trading corporation, when the act is incidental to carrying on the business for which it is incorporated; and (2) in the case of a non-trading corporation when the act is of trivial importance, or of urgent necessity.

1872.

1. See Q. 32*c*.

2. (*a*) Explain what is meant by the Law of Nations. (*b*) When a portion of the Law of Nations is embodied in Municipal Law, what is gained? Give illustrations.

A. (*a*) See Q. 343. (*b*) The portion of the Law of Nations so embodied loses its ethical force, and the Municipal Law becomes more general and simple. The Edicts of the Prætors at Rome were adopted into law by the legislation of Justinian; and the rules of Equity of the Chancellor in England were similarly adopted by the Judicature Act of 1873.

3. What law governs (1) the marriage contract, (2) the effect of a bankrupt's discharge, (3) the personal status of an individual, (4) the forms of procedure of the tribunals?

A. (1) The Law of Contract (2) the Law of Bankruptcy, (3) Private Antecedent Law in rem, (4) Public Adjective Law.

4. Explain "lex fori," "lex loci contractus," and "lex loci ei sitœ."

A. For "*lex fori*,"—see Qs. 377 and 378 "*Lex*

loci contractus" implies the law of the country in which the alleged contract takes place or is to be performed. *Lex loci rei sitæ* implies the law of the country in which the wrongful act in question take place.

5. Point out the limits of the sovereign power of a State over the persons of foreigners within its territory.

A. The Sovereign power of a State can deal with the persons of foreigners residing within his territory when they break the law of reason and nature; *e. g.*, when an ambassador conspires the death of the sovereign in whose land he is. But an ambassador or his servant is not liable to civil suit.

6. (*a*) Where can a crime committed at sea be punished? (*b*) An Englishman is murdered by a Frenchman on board a British merchantship on the high sea. Where can the crime be punished? (*c*) Would it make any difference if the murder took place in a foreign port?

A. (*a*) It can be punished by the court of the country in whose ship it is committed. (*b*) It can be punished in England, (*c*) No.

7. (*a*) Explain what is meant by Common Law. (*b*) Is there any Common Law of India or any thing analogous to the English Common Law?

A. (*a*) See Q. 75. (*b*) Hindu Law may be said to be the common Law of India. But Common Law in the sense of customary Law or usage prevails all throughout India; while it, in the sense of "law in accordance with Nature," exists no where in India.

8. What is a judgment *in rem* and judgment *in personam*. Give instances of each.

A. A judgment *in rem* is a judgment available against all persons at large in the world; *e.g.*, a judgment declaring

one as insolvent. A judgment *in personam* is a judgment available against a particular person; *e. g.* A judgment passed against B in a suit by A for recovery of a plot of land.

N. B.—Questions 9 and 10 are omitted as they relate to Cowell's T. L. Lectures.

11. See Q. 104.

12. (*a*) Give the chief rules for interpretation of statutes. (*b*) What is the effect of prescribing a penalty for an act not prohibited.

A. (*a*) See Q, 9 of 1870. (*b*) It tends to quench sinister wishes which urge to breach of duty.

13. How far is succession affected by the place of domicile of the deceased (1) according to general principles, (2) according to the Indian Suc. Act? How can the domicile be changed according to the Indian Suc. Act?

A. (1) Succession to both real and personal property is affected by the place of domicile. (2) See ss. 5 & 10 of Ind, Suc. Act.

1873

1. (*a*) What is your conception of law and a political society; (*b*) what are the different theories of Blackstone and Bentham as to the origin of the relation between the governors and the governsd.

A. (*a*) See Qs. 32A to C and 38. (*b*) Blackstone's *theory* is that the origin of the relation is due to an "original contract" of obedience and subjection by subjects, and protection on the part of the Sovereign. Bentham's *theory* is that the relation is based on the doctrine of utility, the object of law being to do the greatest good to the greatest number of human beings. See Q. 41.

2. (*a*) Distinguish between the functions of the lawyer

and legislator. (*b*) Enumerate, with short comments, the different sources of laws.

A. (*a*) See Q. 52. (*b*) See Q. 65 to 106.

3. What is meant when it is said that the Hindu Law is personal law? Distinguish between personal and territorial laws.

A. See Q. 11 of 1871.

4. Give a short history of the following measures :—Magna Carta, Petition of Right, Bill of Rights, and Act of Settlement. What were their respective objects?

A. See Stephen's Blackstone Book IV. Part I. Chap. VI.

N. B.—Question 5 is omitted as it relates to Cowell's T. L. Lecture.

6. State shortly Blackstone's account of the origin of the rights of property.

A. Blackstone states that originally the right of property was due to *occupancy*; but it was at first a sort of transient right and lasted so long as *occupancy* existed. Afterwards, with the increase of men in number it became necessary for them to have rights to the substance of things; and hence, the true right of property or ownership which may exist without possession or occupancy grew up.

7. How far are Hindus and Mahomedans entitled to their own laws, and upon what does the title rest?

A. See Q. 10 of 1871. The title rests upon express law;—See ss, 8 and 9, Bengal Reg. VII of 1832, s. 37 of Act XII. of 1887, s, 5 of Act IV of 1872, and s. 16 of Act III of 1873 of the Supreme Council of India.

8. What are the prerogatives of the English Sovereign? What is meant by the maxims "The King never dies." "The King can do no wrong," "Nullum tempus occurrit regi?"

A. See Table IX. App. B.

9. (*a*) When were the Bengal, Madras, and Bombay Regulations respectively first formed into a Code? When did they cease? How does an Act differ from a Regulation? (*b*) What Legislatures were created by the Indian Council's Act of 1861?

A. (*a*) Bengal Regulations were formed into a Code in the year 1781 A. D.; and the Madras and Bombay Regulations, in 1797; A. D. They ceased in 1834 A. D. All laws passed by the Government since 1834 A. D. are Acts, whereas the same passed before were Regulations. (*b*) See Cowell's Lectures.

10. Enumerate the different grades of Civil Courts in Bengal stating what suits they are respectively empowered to try. What is the difference between a High Court and a Chief Court.

A. In Bengal, there are Small Cause Courts vested with powers to try petty suits upto Rs. 50, Rs. 100, Rs. 500, and Rs. 1000. There are, again, Civil Courts presided over by Munsifs for trial of civil suits upto Rs. 1000, and also Rs. 2000. Next there are Courts of Sub-Judges and District Judges for trial of suits from Rs. 1000 upto any amount; they have also appellate powers with regard to cases tried by Munsifs. The District Judges can hear appeals against decisions of Munsifs, and also against decisions of Sub-Judges upto Rs. 5000; and the Sub-Judges can hear appeals against the decisions of Munsifs upto Rs. 1000 only. The highest court is the High Court, which can try any suit, and hear appeals. A "High Court" is established by Royal Charter, and the Judges presiding over it are appointed by the King; but a "Chief Court" is established by order of the India Government which appoints its Judges.

11. (*a*) Distinguish between a specific and a demonstrative

legacy ? When is a legacy redeemed ? (*b*) How is the right of an executor to meddle with property established in a Court of Judicature.

A. (*a*) See ss. 137 and 139 Indian Suc. Act. (*b*) The executor must prove the execution of the will first in a competent court, and obtain a copy of it called *probate*.

12. How does a joint Hindu family differ from a partnership ? What is necessary to give validity to the acts and disbursements of the manager ?

A. A joint Hindu family differs from a partnership in this that the shares of the members in it are not defined whereas the share of each member of a partnership is defined. The acts and disbursements of the manager of a Hindu family are valid when they are meant for the good of all members of the family.

1874.

1, What do you understand by the expressions Positive Law, Moral Law, Law of Nature, and Equity ? What is the fundamental distinction between Law and Religion ?

A. See Qs. 32,25, 54 and 94. Law is made by a determinate human being ; but Religion is made by a determinate superhuman being.

2. See Q. 51.

In India the sovereignty is delegated on the principle that the person deriving power by delegation can again delegate powers to subordinate bodies to the extent it is authorized to do it.

3. (*a*) Enumerate and comment on the grounds of non-liability to secondary obligations of persons who commit breaches of primary obligations. A, a sane man, murders B, and is hanged. C, a mad man, murders D, and is removed to a lunatic

asylum. What is the reason for this different mode of treatment.

A. (*a*) The grounds are insanity, ignorance, or mistake, intoxication, infancy and duress.

Insanity :—includes all disorders of the intellect of a grave character. It is a good plea in criminal eases, and specially in capital sentence cases ; but it makes the accused liable to be sent to the asylum. It is a good plea on the ground that the prospect of punishment would not have its usual deterrent effect ; and also on the ground that to punish insane persons would have the effect of making men desperate rather than to deter them from crime. In a case of contract, insanity is no good plea where the contract is for supply of articles of ordinary use and consumption, or for doing work or any other service suitable to the rank and position of the insane person. In other cases, no man can, says Lord Hale plead his mental deficiency.

Ignorance or *mistake* :—See Q. 136, and Q. 1 of 1876.

Intoxication :—implies a disordered state of the intellect produced by eating or drinking something. Blackstone says it is no *excuse* for evading liability as it is itself a crime; but in English Law, drunkenness is no crime. In cases of crime which requires knowledge and intention as necessary elements for offence, intoxication is a good plea if the state of mind of the accused at the time of committing offence was so disordered that he could not know or intend the usual consequences of his act. In cases of contract, the usual rule is that it is improper to make contract with persons who are apparently incapable of exercising sound judgment. In other cases, the rule is the same as in the case of crime.

Infancy :—Infants are protected by law in the case of contracts and also crimes on the ground that they are wanting

in sufficient knowledge and experience necessary for understanding the effects of his own acts. In different States, different ages are prescribed for the liability of infants.

Duress :—is wrongful compulsion. It is a good excuse where the act done under it is for the benefit of the person exercising compulsion.

4. "Ignorance of fact excuses all liability, whereas ignorance of law excuses none." (*a*) Explain and give an illustration of this rule. (*b*) What is the reason for it ?

A. (*a*) and (*b*) See Q. 136 Example :—If a man fires a gun with the view of killing a bird, and happens accidentally to kill thereby a man who was behind the tree on which the bird sat, he would not be liable for murder as he did not know of the man being there, though he might be charged with negligence. As to ignorance of law :—*e. g.* one who murders a man in India will be hanged and ignorance of law will be held no excuse. If a bond debt is not recovered by suit within three years, it will be barred, and it will be of no use to plead that the rule of three years limitation was not known.

5. (*a*) What is allegiance ? (*b*) Give a brief account of its historical origin. (*c*) Distinguish between natural and local allegiance.

A. (*a*) See Q. 7 of 1870 Allegiance is the *tie* or *ligamen* which binds the subject to his Sovereign in return for that protection which the Sovereign grants him. The thing itself, or substantial part of it is founded in reason and the nature of government ; the name and the form are derived from the Gothics. (*b*) Under the feudal system, all tenants or vassals held lands under some superior or lord, and there was a mutual trust of protection and obedience between them. The tenants had to take an oath, called the *oath of fealty* to the

lord ; and when the lord was the absolute superior, it was no longer the oath of fealty but the *oath of allegiance*, the land held in this case being called *liege-fee*, the vassal the *liege-man*, and the lord the *liege-lord*. The present oath of allegiance is based upon this oath of fealty or allegiance. (*c*) Natural allegiance is such as is due from natural—born subjects. It is a tie which cannot be altered by any change of time, place or circumstance &c., except with the united concurrence of the legislature ; and hence, it is said to be *perpetual*. Local allegiance on the other hand, is such as is due from an alien or stranger-born for such time as he continues within the King's dominion and protection ; and it ceases the instant such stranger transfers himself from this kingdom to another ; and hence, it is temporary.

6. (*a*) What are the different kinds of rights according to Blackstone ? (*b*) Give some account of the right of personal security. How is it determined ?

A. (*a*) Rights are—(1) Personal Rights, (2) Rights of property, (3) Rights in private relations, and (4) Public rights. (*b*) See p. 6. of Blackstone (Reprint of Beng. Press).

N. B.—Questions 7 to 12 are omitted as they relate to Cowell's Lectures, Hindu Law, and Suc. Act.

1875.

1. See Q. 45.

2. (*a*) Distinguish between ownership and possession. (*b*) What do you understand by an easement. Give an example.

A. (*a*) As to ownership and possession, see Qs. 202 to 219. Ownership is the highest measure of right over an object granted by law ; it is something more than mere *possession*, which is inherent in the former unless expressly severed

from it ; *e.g.*, when property is let, lent or mortgaged? Ownership = possession + enjoyment + disposition. (*b*) See Q. 234.

3. Explain shortly how occupancy is said to be the original foundation of the rights of property.

A It is supposed by some Jurists that *originally* the earth was the *general property* of all mankind, and the *first occupant* of a plot of land acquired therein by the fact of occupation a kind of property which lasted so long as the act of possession lasted, and which was confirmed and strengthened in title by the labour of the possessor. According to this theory, *property* owed its origin to *occupancy* ; and necessity for its protection led to the formation of civil society, which produced ultimately States, Governments and Laws.

4. Distinguish between natural born subjects and aliens, and between denizens and persons naturalized.

A Natural-born subjects owe *natural* allegiance, but aliens, *local* allegiance to the King Besides, the *former* is entitled to the full benefit and protection of laws ; and the *latter*, on the other hand, are subject to some civil disabilities. But the capacity of an *Alien* may be enlarged by his becoming a denizen or being naturalized.

A *Denizen* :—is an alien-born, but who has obtained *exdonatione regis* letters patent to make him to a certain extent an English subject. He is in a middle state between an alien and a natural-born subject, and partakes of both of them. He may take lands by purchase or devise, which an alien in general may not, but cannot take by inheritance ; for his parent, being an alien had no heritable blood and could not therefore convey anything to him. Again, the issue of a *denizen*, born before denization cannot inherit his rights ; but his issue born after may ; and no denizen can be of the Privy

Council or either house of Parliament, or have any office of trust, civil or military or be capable of any grant of lands, &c., from the crown.

Naturalization —An alien may be naturalized in two ways; *viz.*,—(1) by Act of Parliament under 7 and 8, Vic. c. 66, in which case he is put in exactly the same state as if he had been born in the King's ligeance. In such case, his rights have retrospective effect, and thus he differs from a mere *denizen* (2) By certificate of the Secretary of State in which case he gets all the rights of a natural-born British subject except the right to sit in the Privy Council or in any house of Parliament, and such rights as are excepted in the certificate.

5. Distinguish between Crown Colonies and Settled Colonies. Give examples of personal and territorial laws now existing in India.

A Crown Colonies have got legislative powers of a restricted kind, the supreme power being vested in the mother country: *viz.*, in British Parliament. But the Settled Colonies (*e, g*, Canada) have got wider legislative powers, and legislation of all kinds are carried on in their constitution subject to the voice of the King or Queen of the mother country, who is represented by a Governor. Hindu and Mahomedan Laws are personal laws; but the Indian Penal Code and the Civil Procedure Code are territorial laws.

N. B.—Questions 6 to 12 are omitted as they do not relate to Jurisprudence.

1878.

1. (*a*) When is ignorance or mistake an excuse in contract? (*b*) Explain the reasons for the rule that ignorance

of law excuses no man. (*c*) What was the Roman Law on this subject?

A. (*a*) In contracts, ignorance or mistake, when not due to fraud, or wilful or negligent omission, is an excuse, if it be *mutual*, and not *single*; *i. e.*, on one side only. If it be single, the Court is to consider whether it would be fair to enforce the contract or to mitigate the liability. (*b*) See Q. 136. (*c*) The Roman Law did not apply this rule so sweepingly, but made exceptions, in favour of soldiers, persons under twenty-five and persons who had no ready access to legal advice; and it also excused women partly.

2. Define a sanction, and distinguish between a derivative and ultimate sanction.

A. As to *sanction* see Q 53 and 118. Sanctions which consist merely of an obligation are called *intermediate* or *primary*; but those which consist not of an obligation but of some other evil, which it is supposed the parties would desire to avoid, are called *ultimate* or *derivative* sanctions; *e g*, when the order is that a man is found guilty of committing nuisance on a public road, and is therefore fined Rs. 5 or in default to undergo imprisonment in jail for ten days, the liability to pay fine is called primary or *intermediate* sanction, and the liability to undergo jail is called *ultimate* or *derivative* sanction. *Derivative sanction* is one which is derived from another *Sanction*; but an *ultimate* sanction is one which follows last of all.

N. B.—Questions 3 and 5 to 9, are omitted as they do not relate to Jurisprudence.

4. *A* who dwells at Calcutta goes to Madras and then enters into an agreement with *B* to deliver goods to him at Bombay. In what Court or Courts can *B* sue *A* for non-delivery of those goods? Give reasons for your answer.

A *B* can sue *A* either in Madras or in Bombay ; for, the contract was made in Madras, and was to be performed in Bombay

10 Define the right of personal security and state at what time life begins in contemplation of law?

A The right to personal security consists in a man's legal and uninterrupted enjoyment of his life, limbs, body, health and reputation In contemplation of law, life begins from the time when an infant is able to stir in the mother's womb

11 What is the distinction between natural and local allegiance ? Can a British subject free himself by any and what method from the former ?

A. See Answer to Q 5 of 1874 He cannot free himself from natural allegiance except with the united concurrence of the legislature

12. Into what different classes may the prerogatives of the Crown be divided ? Give examples of each class

A See Table **IX**, App. B.

1877

1 Enumerate and briefly discuss the different sources of law.

A See Chap V.

2. What is meant by the irresponsibility and by the legal ubiquity of the sovereign, and upon what grounds do these attributes rest ?

A. *Irresponsibility* of the sovereign implies that the King is not responsible to any person for any act ; it is an attribute of the Royal character, and is based upon the maxim that "the King can do no wrong." Legal *ubiquity* of the Sovereign implies that the King is always present in all the

Courts and his image is as it were reflected by the Judges; it is an attribute of the sovereign authority and is based upon the maxim *viz.*,—"King is the fountain of justice.

3. Distinguish between civil injuries and crimes.

A. See Q 326, A *civil injury* is a violation of the private right of an individual; but a *crime* is in addition to this a violation of the right of the State.

4. Analyse the meaning of the terms "intention," "rashness" and "heedlessness," and point out how far they are of use in determining liability.

A. "Intention"—See Q. 3 of 1894.

For "rashness," and "heedlessness," see Qs. 139 and 140.

5. See Q. 230.

6. State briefly Blackstone's account of the origin of property.

A. See Q. 3 of 1875.

1878.

1. Define the Law of Nature, and explain its foundation.

A. See Q. 54.

2. What is meant by the original contract of society?

A. See Q. 42.

3. Explain the origin of property.

A. There are *three theories* with regard to the *origin* of property. The *first* or *Older* theory is this—that originally the earth was the *general* property of all mankind, and the first *occupant* of a thing or plot of land acquired therein a kind of property which lasted so long as the act of possession lasted, and was confirmed and strengthened in title by the labour of the possessor. Necessity for protection of such possession then led to the formation of society, which produced latterly States.

The *second* or *Patriarchal* theory holds that originally there were patriarchal families as units, amalgamation of which led to the formation of "clans" which again by amalgamation produced "tribes" and "States."

The *third* or the *Newer* theory is the *reverse* of the *second* theory; and it holds that originally there were *tribes* practising promiscuity. They then dissolved into *clans*, which again dissolved into *families*.

1879.

1. To what extent is the Common and Statute Law of England applicable to India?

A. They apply to the presidency towns only of India.

4. Illustrate the maxim "Delegatus non potest delegate." In connection with this maxim state what is Mr. Markbly's opinion as to the powers of the subordinate legislative bodies. Do you think his views are correct?

A. The maxim implies that one acquiring power by delegation cannot again delegate the same to another; *e.g.*, a person appointed as Commissioner by Court for examining a witness cannot again appoint another person for doing the work. Mr. Markby says that subordinate legislatures can delegate their functions so far as they are authorized to do it. Yes.

7. See Q. 73.

10. See Q. 63.

N.B.—The other questions are omitted as they do not [illegible] nce.

1880.

1. See Q. 32. B.

2. What do you understand by "primary" and "sanctioning" obligations. Enumerate and comment upon th

exceptions to the rules of law which impose secondary obligations upon persons who commit breaches of primary obligations.

A. *Primary* obligations are those which exist *per se* and independently of any other duty or obligation. *Sanctioning* or *secondary* obligations are those which have no independent existence, but only exist for the sake of enforcing other duties or obligations The duty or obligation to forbear from personal injury is a *primary* one, but the duty or obligation to pay a man damages for the injury done to his person is a *sanctioning* or *secondary* one. The exceptions are insanity, ignorance or mistake, intoxication, infancy and duress. See Q 3 of 1874

3 (*a*) What is the distinction between ownership and possession? (*b*) Compare the equitable ownership in English Law with that in the Roman Law.

A (*a*) See Q. 2 of 1875 (*b*) There is nothing in Roman Law analogous to the relative position of the Common Law and Chancery Owners of property in England. In England, the Common Law rights of one owner and the Chancery rights of another are constantly in conflict, and the Common Law owner would be restrained by the Court of Chancery if he attempted to use a single right on his own behalf. The Roman Fidei Commissum and Usus are supposed to be analogous to the English Equitable Ownership. But such is not really the case. For, there is no conflict of ownership in them. In Fidei Commissum, what the Prætor did was to compel the transfer of the Ownership in accordance with the fiduciary request. Again, when the Roman owner of a house granted the *Usus* of it to another, there was nothing fiduciary in the matter and the relation created was like that of an ordinary tenant.

4. Give a brief account of the nature and origin of rights of property in general.

A. As to *origin*—See Q. 3 of 1878. And as to *nature* :—five points are important; *viz.*,—(1) All things cannot be called *property*. Things capable of appropriation by their nature are called property;—*e g*, air, sea, &c. not so capable are not called property. (2) The essence of property consists in the power of the owner to exclude all other persons from interfering with his enjoyment. (3) The power of the owner is not despotic, but is restricted in the interests of himself, other persons and the community at large. (4) The elements of property are (*a*) person entitled, (*b*) the object, (*c*) forbearance, and (*d*) the world at large. (5) Property or Ownership includes right of possession, right of enjoyment, and right of disposition.

5. (*a*) What according to Blackstone are the various means of acquiring title to things personal? (*b*) State the difference between gift and donatio mortis *Causa*.

A. (*a*) By (1) occupancy, (2) invention, (3) gift and assignment, (4) contract, (5) bankruptcy, (6) will and administration. (*b*) Donatio Mortis Causa is a particular kind of gift, which though conferred *intervivos* does not take effect till after the death of the donor; hence, it is in the nature of a legacy, and of no avail against creditors in case of a deficiency of assets It must be accompanied by delivery of the chattel, or if it be in action and not possession, by delivery of the deed by which it is secured. It is given in contemplation of death, and must be returned if the donor survives his illness.

6. Explain the different kinds of allegiance, and state the extent of each kind.

A. See Answer to Q. 5 (*b*) of 1874.

1881.

1. See Q. 113.

2. Give the judicial sense of the terms intention, negligence, and malice.

A. See Qs. 133, 137 and 139, and also Q. 5 of 1894. *Intention* implies consciousness, whereas *negligence* (when expressing a state of mind) implies unconsciousness, and is therefore of opposite nature. *Malice* implies a state of mind (orig. the same thing as malevolence) and refers to a bad motive which induces a man to act or abstain from acting. It refers to cases where an event is contemplated as an end or means to an end, and also where it is adverted to and expected without being desired at all.

3. Obligations may be neither ex contractu nor ex delicto. Illustrate them by examples.

A. (*a*) See Q. 120. (*b*) In India, the obligations of a shareholder to repay to his co-sharer the amount of Government revenue which he has paid on his behalf is neither *ex contractu* nor *ex delicto*. Again, if the sovereign imposes a tax, and farms it out to a person with right to realize it by distress of goods, the duty to pay tax to him is neither *ex contractu* nor *ex delicto*.

7. What are the prerogatives and legal attributes which attach to the Crown of England ?

A. See Table IX, App. B.

8. What according to Blackstone was the origin—(1) of the right of property, (2) of the right of inheritance, (3) of the right of disposing of one's property, or a part of it by testament?

A. (*a*) See Answer to Qs. 6 of 1873 and of 1878. (*b*) Blackstone thinks that occupancy was the origin of the right of inheritance as also of the right of property. For,

when a man dies, his children and nearest relations are usually about him at his death-bed, and are the earliest witnesses of his death; hence, they become the next immediate occupants of the properties left by him. (*c*) When properties became inheritable, the inheritance was long indefeasible; and the children or heirs were incapable of exclusion by will, till at length it was found that the strict rule of inheritance made the heirs disobedient and headstrong, defrauded creditors of their just debts, and prevented many provident fathers from charging their estates according to the exigencies of the family. This introduced the right of disposing of property or a part of it by will.

N. B.—Questions nos 4 to 6, 9 and 10 do not relate to Jurisprudence, and hence, they are omitted.

1882

1. See Qs. 1, 13 and 15.

2. What is a Legal Fiction. Discuss the value of Legal Fictions as an agent of reform in Ancient Law. Estimate the value of adoption as a Legal Fiction. What purposes did adoption serve in Hindu Law?

A. Legal Fiction consists in feigning or assuming that "something which is obviously, is not legally" or some thing which is not obviously, is legally; or, in other words, "in introducing changes in the law," and yet declaring that no change has been made. Ancient Law required changes in many respects with the progress of society and advance of civilization, but human minds are naturally conservative and opposed to constant changes; hence, Fiction served good purposes as an agent of reform; for, it paid respect to the law which it virtually changed; and it tried to conciliate the lovers of things ancient. Adoption as a Legal Fiction serves

to continue the family and thereby to help the progress of society. In Hindu Law, it served the purpose of performance of religious rites for the good of the spirit of the deceased.

3 (*a*) State and discuss Savigny's definition of contract. (*b*) Compare it with the definition given in the Indian Contract Act.

A. (*a*) See Qs. 263 and 269 (*b*) The Indian Contract Act makes all agreements made for a consideration enforceable at law But suppose two cases,—*viz*, (1) two persons agree to intermarry, and (2) they agree to regard each other through life with mutual love and affection. Now, as a fact although both of these are a greements, the former only is enforceable, while the latter is not; and this follows clear from Savigny's definition, and not from the definition as given in the Indian Contract Act. Again, suppose *A* and *B* having dealings together go over the account and ascertain that *A* owes Rs. 500 to *B*, whereupon *A* promises to pay that sum to *B* (1) immediately, and (2) next week. Now, in the (2) case. the promise is considered as without consideration and there fore void; and this result under the Indian Contract Law seems to be ridiculous. But according to Savigny's definition oth cases are good contracts. For these reasons, Savigny's definition seems to be better than that of the Indian Contract Act.

4. See Q. 183

N B.—Questions 5 to 9 are omitted as relating not to Jurisprudence.

1883

1. What do you understand by legal obligation? Distinguish between (1) absolute, (2) relative, (3) primary and (4) secondary obligation.

A. See Qs. 153 and 257, and Q. 2 of 1880.

2. If a man's property be wilfully injured what is the nature (1) of the obligation on the part of the person causing the injury to suffer punishment for mischief or trespass, and (2) of the obligation to make compensation to the party injured?

A The obligation in case (1) is *primary*, while the same in case (2) is *secondary*

3 See Q. 130

4 (*a*) Give examples of absolute and conditional ownership (*b*) Distinguish between co ownership and the ownership of juristical persons

A. (*a*) When a person holds land subject to payment of rent or revenue, he is a *conditional* owner, but when he buys goods, and moveables, he is *absolute* owner (*b*) See Q 130.

13 What is meant by the Prerogative of the Crown of England? By what is it limited?

A See Table IX, App B It is limited (1) by the power of the Parliament, (2) by the right of the people to petition the Sovereign, and (3) by the Law Courts

1884

1 (*a*) What is the common characteristic of all laws? (*b*) Compare *moral* law with *positive* law (*c*) Give an instance in which the two kinds of law may be said to conflict

A (*a*) The common characteristic is that there runs throughout them all the idea of regular succession of events, governed b a rule, which originates in some power, condition or agency upon which the succession depends. See also Q 126

2. Describe a *natural* society. Explain how a *natural* society may become a society *political*. Shew that the bare definition of a society *political* does not convey the full and complete idea of sovereignty

A. A natural society is a society in which men live in a state of nature without any common government. A political society is a society in which there is a common government in which one person (or persons) has got "the absolute power of issuing commands to the rest, to which commands the rest are generally obedient" But it does not include the *second* idea of Sovereignty—*viz*, *independent of all outside*, though it includes the first—*viz*, *paramount within*

3. (*a*) Distinguish between rights *in rem* and rights *in personam* (*b*) Under which of these heads would you place conjugal or marital rights ?

A (*a*) See Qs 163, 164 and 258 (*b*) Conjugal rights, *i e*, mutual rights of husband and wife are rights *in personam*, but the rights of husband or wife as against the world (none should deprive them of their consort's company, and have criminal intercourse with him or her &c,) are rights *in rem*, while such rights by one against his consort are rights *in personam*

4 Point out the relation, if any, between Jus Gentium and International Law Is International Law a branch of Positive Law ?

A Jus Gentium or International Law implies the same thing, *viz*, the universal and Common Law of all nations International Law has been built upon the Jus Gentium of the Romans. It is no branch of positive law, as there is no supreme power, and no arbiter except public opinion.

5 Give a brief sketch of the rise and growth of Prætorian Law (Jus Prætorium). Note the points of difference between Roman and English Equity.

A See Q. 95.

6. (*a*) Explain the maxim the King can do no wrong

Enumerate the different branches of the Royal authority of power.

A. (*a*) and (*b*) See Table IX., App. B.

1885.

5. What are the several kinds of rights as opposed to wrongs enumerated by Blackstone, and what do they include ?

A. See Table X, App. B.

6. Give examples of obligations to which there is no corresponding duty.

A. The obligation of abstaining from cruelty to animals and from acts of immorality.

8. What are the duties which the sovereign owes to the people as expressed in the coronation oath ?

A. The duties are (1) to govern the people according to law, (2) to observe and keep his own law, (3) to execute judgment in mercy, and (4) to maintain the established religion

9. What are the chief provisions of the Naturalization Act of 1870 and 1872 ?

A. Naturalization may be made by a certificate from the Secretary of State ; and if so made, the person naturalized acquires after 5 years the rights of a British subject and becomes liable to all his duties.

10. What are the English Statutory exceptions to the maxim *Nullum tempus occurrit regi ?*

A. See Table IX. App. B.

12. By what tenure do the Judges in England hold office, and how did they hold it formerly ? In what reign was the alteration made ? How may a Judge lawfully be removed from office ?

A. By the power of the Parliament. Formerly they held it at the King's pleasure. The change was made in 1701.

An English Judge may now be removed from office lawfully by the *Parliament* only.

1886.

1. (*a*) What is positive law? (*b*) How does it differ from (1) Customary law, and (2) International law? (*c*) In what sense is it true to say that a sovereign has no right to confiscate the property of his subjects?

A. (*a*) See Q. 32. (*b*) Customary law is law fashioned and framed by judicial decision or direct legislation upon pre-existing custom. It becomes positive law when it is clothed with legal sanction. Besides, it may be statute law or law by judicial decision; but positive law is statute law only. International law is rather a branch of Positive Morality, and is different from positive law both as regards source and sanction; and it is not included in the proper province of Jurisprudence. (*c*) It means the Sovereign has *legal* right to do it.

2. (*a*) Explain exactly the meaning of "*jus in rem.*" (*b*) *A* has a right of way over *B*'s land, what is the nature of *A*'s right?

A. (*a*) See Qs. 163, 164 and 258. (*b*) It is a right *in rem.*

3. (*a*) Examine the distinction between civil injuries and crimes. (*b*) How far is the end in a civil proceeding redress?

A. (*a*) See Qs. 326, and 3 of 1877. (*b*) The *direct* end of a civil proceeding is *redress*, and its *remote* end is prevention of offences.

4. See Q. 95.

5. Analyse carefully the meaning of possession, referring particularly to the following cases;—(1) guardian and infant, (2) landlord and tenant.

A. (1) See Qs. 212 and 213. (2) The possession

of the tenant is *derivative* possession as he has control over the land, and he derives from his landlord the right to dispose of it in such way as he likes, subject to the right of the owner which he does not deny

6 (*a*) What is a sanction? (*b*) How do you distinguish it from an obligation? What are the different kinds of sanction?

A (*a*) See Qs 53 and 118 (*b*) *Sanction* is evil incurred, or to be incurred by disobedience to command. *Obligation* is liability to that evil in the event of disobedience, and hence, it regards the future Sanction operates upon the *desires*, but an obligation to desire is not possible Sanctions are *religious*, *legal* and *moral* Sanctions annexed to the Law of God are *religious*, sanctions annexed to Positive Law are *legal* or *political*, and sanctions attached to the positive moral rules are *moral* Sanctions are also called *civil* or *private*, and *criminal* or *public*, as they are enforceable in civil or criminal Court Besides they are also divided as *primary* or *intermediate*, and *ultimate*

9 Distinguish natural born subjects, aliens, denizens and persons naturalized

A See Q 4 of 1875. (C U B L Ex)

10 (*a*) What do you mean by the Royal Prerogative? (*b*) What are the rights which the sovereign possesses as being the first in military command? (*c*) In what sense, is it true to say that the sovereign is the fountain of justice?

A (*a*) See Table IX, App B (*b*) He can (1) raise and regulate fleets and armies, (2) build forts, (3) appoint ports and havens, (4) erect beacons, light-houses and sea-marks, (5) forbid the importation and exportation of military stores and arms, and (6) confine his subjects within the realm or recall them from foreign ports. (*c*) He can (1) prosecute

offenders, (2) pardon crimes, and (3) issue proclamations. "Fountain" here means not the *author* but the *distributor*.

1887.

1. See Q. 6.

2. Give the meaning of the expressions *jus in rem*, and *jus in personam*.

A. See Qs. 163, 164, and 285.

3. Give the distinction between real and personal servitudes, and give examples of each.

A. See Qs. 233 and 232.

4. State the chief distinctions between the English and the Roman systems of equity.

A. See Q. 95.

10. Mention the most important statutes by which at different times, subsequent to the great charter of liberties obtained from King John, the political liberty of England has been asserted?

A. (1) The confirmatio chartarum (25 Ed. 1). (2) Petition of Right (3 Car. 1). (3) The Habeas Corpus Act (31 Car. II. c. 3). (4) The Bill of Rights (1 W. & M. St. 2. c. 3). (5) The Act of Settlement (12 and 13 Will. iii).

11. What are the chief disabilities to which aliens living in the United Kingdom are subject?

A. They cannot (1) have a seat in Parliament, or Privy Council, (2) hold property out of the United Kingdom, (3) be the owner of a British ship.

1888.

1. (*a*) What are the four classes into which Austin divides "laws properly so called" and "laws improperly so called." (*b*) Shew the essential difference between positive law and other laws.

A. (*a*) See Table IV, App. B. and Qs. 31, 32 A to C. (*b*) Positive Law is laid down and enforced by the sovereign of a political State, whereas other laws are laid down and enforced by determinate super-human being or indeterminate human beings.

2. See Q. 79.

3. Explain the three kinds of presumptions in Roman law, *viz.*, presumptio hominis, presumptio juris, and presumptio et de jure.

A. Presumptions are primarily divisible into *presumptiones juris* and *presumptiones hominis* The former is again divided into *presumptiones juris* (simply so called), and *presumptiones juris et de juris. Presumptiones juris* are inferences drawn in pursuance of the preappointment of the law. When it is so simply, proof to the contrary is admissible, but till it be produced, the presumption necessarily holds. But where it is *juris et de jure*, the inference is conclusive and no counter evidence is admissible. *Presumptio homines* are inferences drawn from facts of which the law has left the probative force to the discretion of the judge ; and in such cases, not only proof to the contrary is admissible, but the inference is not conclusive though no counter-evidence be given.

4. Compare the position of the Hypothecarious under the Roman law and the mortgagee under English law, as regards the right over the property which is the subject of hypothecation.

A. In Hypothecarius or Hypotheca, the ownership of the thing pledged remains with the debtor ; but in English Mortgage, the right is transferred to the mortgagee, subject to the condition that it would be reconveyed to the debtor if the debt be satisfied duly.

5. Enumerate the sources of English law and explain each shortly.

A. See Qs. 65 to 106

6 What is the legal conception of possession ? Explain the elements that constitute it. What, according to Savigny, are the rights or consequences attributed to possession ?

A See Qs 202 and 203.

7 Can a natural born subject put an end to his allegiance to the British Crown by any act of his own ?

A See Q 11 of 1876

1889

1. Define a "Custom" How are customs generated, and what legal force have they ?

A See Q. 70.

2 (*a*) State the origin of English Equity, and in what manner it was first exercised ? (*b*) How did Equity as at first administered by English tribunals differ from Equity as now administered by such tribunals ?

A (*a*) See Qs. 94, 95. As old rules of law became too narrow and could not keep pace with the ideas of advancing civilization, a machinery was required for adapting them to the latter, and hence arose Equity. It was first administered by the rules of good conscience and natural justice as discoverable in the Chancellor's conscience ; and hence, arose the saying "Equity varies like the Chancellor's foot " as different decisions were given upon similar subjects by different Chancellors. But now the rules of Equity are settled and fixed ; and hence the Chancery Courts are guided by fixed rules like the Common Law Courts.

3. See Q. 129.

4. **Define rights in rem and rights in personam.**

A See Qs. 163, 164 and 258.

5. (*a*) Define a servitude. (*b*) Distinguish between Prædial Servitudes and Personal Servitudes according to Roman law Give an instance of each. (*c*) Explain the term "Servient land"

A (*a*) See Q 231. (*b*) See Q 233. (*c*) See Q 231.

6 (*a*) Distinguish Positive Law from Positive Morality. (*b*) Give an example of each

A (*a*) See Table IV, App B (*b*) Positive law, *e. g*, in India, one who commits murder as defined in the Indian Penal Code is to be punished with capital sentence Positive Morality,—*e g*, Law of Fashion or Law of Honour

7. (*a*) How does a right become vested? (*b*) Is actual possession necessary? (*c*) Land is given to *A* for life, and if *B* shall be living at the death of *A*, then to *B* Define *B*'s right

A (*a*) A right becomes vested, when it accrues, though it may not take place immediately, *e g*, the right of a legatee in a will becomes vested in him by the death of the testator. (*b*) No (*c*) The right of *B* is a vested remainder

1890

4 (*a*) What are personal rights according to Blackstone, and how have these rights been chiefly obtained?

A. (*a*) See Table X, App B. and Q 8 of 1871.

5. (*a*) How may a master behave towards others on behalf of his servant? (*b*) What may a servant do on behalf of his master?

A. A master may help his servant in an action against a stranger He may commit an assault upon another in defence of his servant He may sue another by whose action his servant is disabled from service. He is liable for any act of servant done under his order, express or implied

A servant may also justify an assault upon another in defence of his master. He is liable for *illegal* acts even if done under his master's orders. He is not liable personally for price of purchase made under his master's order and for his benefit, if the seller knows it.

6. "There are two kinds of liability for unintentional harm. According to the first, such liability ought to be based upon personal fault. According to the second, a man acts at his peril." Explain and discuss this statement.

A There are acts, which though unintentional, may cause injury to others; they may be due to negligence, or accident (chance). In the *former* case, it is due to personal fault: and in the latter, the man is said to act at his peril. If a man stores water in a reservoir on his land, he does nothing illegal; but if the reservoir bursts out suddenly and causes damage to another, he will be liable for damage.

7. Consider the grounds on which an attempt to commit an offence is more lightly punished than the complete *offence* itself though the offender may have done all he could towards completion.

A. An offence concerns an individual as well as the society in which he lives; but an attempt to commit an offence concerns only the society as no harm is actually done to any person; hence, as one of the principal parties concerned is wanting, the punishment is made lighter than in a case of actual offence.

8. "Ownership," "Succession," "Obligation." Discuss the meaning of the above terms, and state the different topics of law which may be included under the head of each.

A. *Ownership*—See Qs. 219 and 220. It includes these topics; *viz.*, (1) of possession, enjoyment and disposition. (2) What sort of right it is, (3) how it may be

acquired, (4) over what objects it may be acquired, (5) by whom it may be acquired, (6) what are its different forms, (7) how it may be retained, (8) how it may be transferred (9) how it may come to an end.

Succession.—See Q. 178. Topics are (1) what is succession, (2) what are its different forms, (3) how it may take place, (4) with respect to reality and personality ; (5) intestate and testamentary succession.

Obligation—See Q 257. Topics are (1) what is obligation, (2) what are the different kinds of it, (3) how does it arise, and (4) how does it cease, (5) what are its effects, (6) how is it enforced.

9. What are the features common to both English and Roman Equity according to Maine ?

A. See Q. 95.

10. What are the relative and absolute duties? Give examples.

A. See Q. 153.

13. How are servitudes distinguished by the Roman law? Give examples of the different kinds of servitudes.

A. See Qs. 231 and 233.

1891.—First.

1. Define a right.

A. See Q. 114.

2. Illustrate and explain the statement that the movement of progressive societies has hitherto been a movement from status to contract.

A. *Status* implies position of persons in a family. The movement of societies has hitherto been towards creation of individual rights ; and this has been effected by the gradual dissolution of family dependency. Formerly, individuals form

ing members in a family had no separate rights; and all rights and duties were supposed to exist in families. The status of a slave has disappeared; and this has been replaced by the contractual relation of master and servant. Similarly, the status of the female under tutelage and that of the son under power have also no place in modern society.

3. Explain the meaning of the maxim that the King can do no wrong.

A. See Table X, App. B.

4. What are the chief methods by which ownership is acquired?

A. See Q. 224.

5. (*a*) What is known as the Historical method? (*b*) Give a sketch of the early history of testamentary succession and show how by adopting the historical method the theory about its early origin is falsified?

A. (*a*) Historical method is the method of enquiry by perusal of facts as recorded in history. (*b*) See Q. 184.

7. (*a*) What is procedure and what is the object to be obtained by rules of pleading. (*b*) What is S. W. Markby's opinion of the Indian rules on the subject, and why does he say that the duty of settling issues is so onerous that the Courts in India have almost universally neglected it.

A. As to procedure—See Q. 121. The rules of pleading are meant for ascertaining easily the points on which the contending parties are at issue. (*b*) Markby says that the rule laid down in India is that every possible issue which can arise should be raised prospectively; and it is such an onerous duty that the Courts in India have almost universally neglected it.

10. Distinguish on Austin's principles, (1) an occasional

command, (2) a rule, (3) a law proper, (4) a law improperly so called which is not a command, and give illustrations.

A. (1) An occasional command is an order which obliges one or more persons individually to a particular act or omission. (2) It is a *rule* when it refers to a general course of conduct It is an order when a servant is told not to go out in the evening on a particular day. But it is a rule when he is told not to go out at all in the evening. (3) A law proper, is a general rule of external human action enforced by the sovereign in a political State, *e.g.*, an order upon the people that whoever will commit nuisance upon public road will be liable to pay a fine upto Rs. 20. (4) *Declaratory laws* are not commands as they merely explain duties and are not laws properly so called. *Repealing laws* as they release from existing duties are not commands, but are laws improperly so called.

1891.—Second

2 What is duress? How many kinds of duress are there? Describe them. What was the Petition of Right, and when was it enacted?

A. "Duress" consists either in violence to the person or in threatened violence of the same character. It is an act by which the *will* itself, being amenable to motives, is coerced. It is of *two* kinds; *viz.*,—(1) actual violence to person, *e.g.*, imprisonment, or (2) threat of using violence, called, "duress per minas." Petition of Right was an Act of Parliament by which in the reign of Charles I. the liberties of the people were declared.

5. (*a*) What is sanction? (*b*) Give an example of vicarious sanction. (*c*) What objection is there to *expost facto* laws? Give Austin's definition of a right.

A. (*a*) Sanction—See Qs. 45 and 118. (*b*) Forfeiture, for treason. (*c*) The objection is that intention or inadvertence is necessary to constitute an injury Austin states that a party has a "right," when "another or others are bound or obliged by the law, to do or to forbear *toward* or *in regard* of him."

6. State shortly what is meant by Emphyteusis, Res mancipi, Res nec mancipi.

A. Emphyteusis—See Q. 229. For the other two expressions, see Maine's Ancient Law.

7. When, by whom and by what means was a regular Criminal Judicature administering a true Criminal Jurisprud ence first called into existence in Rome ?

A. In the year 149 B. C. L. Capernius Piso did it by appointing the permanent commission.

9. What statutory provision has been made and when in England to secure the dignity and political independence of of the Judges ? And how, if at all, may a Judge in England be removed from office ?

A. 13 Will. II. C. 2 and 1 Geo. III. C. 23. The Judges may be removed by the Parliament, but not by the king at his pleasure.

10. What provision was made by Magna Carta with regard to foreign merchants.

A. Magna Carta provided that all merchants might safely come in, stay in or go out of England except in time of war ; and if war broke out their goods would be attached and treated in the same way as the goods of English merchants.

1892.

1. (*a*) What are Austin's ideas regarding the term "com mand ?" (*b*) How are laws or rules distinguished from com mands which are occasional or particular ?

A. (*a*) See Q. 53 ; (*b*) See Q. 10 of 1890.

2. Give Maine's definition of Equity. How does Equity differ from Legal Fictions and Legislation ?

A. See Q. 99.

4. Define Duty. What duties are (1) positive and negative ; (2) relative and absolute ; (3) primary and secondary ? Give an example of each.

A. Duty—See Q. 116. (1) *Positive* duty is the doing of an act, *e. g.*, to maintain the married wife. *Negative* duty is omission or forbearance from doing an act, *e.g.*, not to be cruel towards animals. (2) See Q. 153 (3) See Q. 257, and Q. 2 of 1880.

5. What are the main essentials of a convention ? Define unilateral and bilateral conventions.

A. (Convention implies contract). See Qs. 268 and 271. When both parties are bound to the performance, the contract or convention is called *bilateral* ; but when only one party is so bound, it is called *unilateral.*

6. What were the different modes in which marriage could be contracted according to Roman usage ? In what capacity did a husband acquire rights over the person and property of his wife, and how did such marriage affect her position and property ?

A. There were *three* forms of marriage ; *viz.*, (1) Conformation, (2) Co emption, and (3) Uusus. In the capacity of father. She became included in his *patria potestas.*

7. (*a*) What is Treasure Trove ? To whom does it belong ? What were the special rules which governed the acquisition of Treasure Trove according to Roman Law ? (*b*) What do you understand by "acquisition of accession ?"

A. Treasure Trove is property buried under the land. It belongs to the owner if he can be found. Otherwise, it belongs to the first finder, subject to the rights of the owner

of the land on which it is found, and also of the State itself. By the Roman Law, half was due to the finder, and half, to the owner of land. Acquisition of accession implies increase as the animals bearing offspring, and trees bearing fruits.

9. State the different classes of presumptions in Roman Law, and give an example of each.

A. See Q. 3 of 1888.

10. Explain fully what is Universitas Juris, and how is it constituted ?

A. See Q. 179. It is the aggregate of rights, duties and obligations belonging to a man, which on his death passes to his heir, or on his insolvency, to the official assignee. It is less than the *status*, which includes all rights, duties and obligations as well as the capacities and incapacities of a man at one time. It differs from *condition*, as it is not the same or similar in all persons

12. What was a general pledge under the Roman Law, and how were pledges extinguished ?

A. A *general* pledge is a pledge of each thing now belonging or hereafter to belong to the debtor ; but it does not include debts. The pledges were extinguished when (1) the pledgee became the owner of the property, (2) when the pro perty was released, (3) when the obligation was discharged, and (4) when the pledged propery was brought to sale by the pledgee.

1893

1. See Q. 54.

2. Write notes on following dicta :—(*a*) No law can be unjust. (*b*) The King can do no wrong. (*c*) The King never dies.

A. (*a*) Laws are made by the Sovereign who is the

impartial protector of all people, and hence, they are not expected to be unjust in any way (b) Although the measures passed by the King may be tyrannical, yet his *person* is to be considered as sacred, *i e*, incapable of doing any wrong No personal imputation is to be made against him (c) Although one King may die, his heir will be King again, and hence, it is said that the King never dies

3 "The phrase *in personam*, like the phrase *in rem* denotes the compass of the right" Explain and state the essentials of Jus in rem and Jus in personam respectively

A See Qs 163, 164 and 258

4 What are the various sources of law? Write short notes on each of them?

A See Qs 65 to 106

5 State and discuss S H. Maine's view as to the materials out of which the Jus prætorium was formed? Compare the development of the Jus prætorium with that of English Equity

A See Qs 95 and 99.

6. The conception of absolute power of disposition of property to take effect not only during the lifetime of the proprietor, but even after his death is essentially modern Explain and discuss this statement.

A The idea of disposing of a man's property in such way as he wills is a modern one Formerly, rights existed in families, and not in individuals, and hence, no person had absolute power of disposing of any thing But in modern times the idea of individual ownership has grown up to the fullest extent, and hence, a person can legally dispose of a thing owned by him in any way he likes

7. How do you explain the fact that under the old Roman law, the same formalities of execution were necessary for the

validity of a contract as that of a will. How came these formalities to be relaxed?

A. Will was originally but a form of conveyance only; and as both conveyances and contracts were included in the term *nexum* meaning a transaction with the copper and the balance, the same formalities had to be observed in execution of wills as in the case of contracts. But with the progress of morality, men gave up the lengthy procedure and substituted writing in its place.

8. See Q. 327.

9. Distinguish between will and intention, and exemplify the varieties of intention pointed out by Austin.

A. See Q. 133, and Q. 5 of 1894.

1894.

1 See Q. 38.

2. See Q. 39.

3. What are absolute duties. Give an instance of each of the four kinds of absolute duties.

A. See Q. 153.

4. Q. 139.

5 Give an example of each of the three varieties of intention mentioned by Austin.

A. (1) The case in which an event (bringing the fruit to the ground) is contemplated as a consequence of an act which is likely to happen, and is wished as an end; (2) When the event is contemplated as before, but wished as a means to an end; (3) When it is contemplated as before, but is not wished at all either as an end or as means to an end.

6. See Q. 210.

7. See Q. 212.

8. See Q. 64.

9. Illustrate by at least two examples Sir Henry Maine's

position that ancient legal conceptions and ancient terms are subjected to a process of gradual specialization.

A. *Nexum* (implying a transaction with copper and the balance) originally implied both contract and conveyance. Afterwards conveyances came to be designated by the term *Mancipation* while *Nexum* continued to imply contracts only. *Manus* (implying power) originally included the power of the head of a family over children, wife, as well as slaves, flock &c, but latterly power over children, was expressed by the term *potestas*, while *manus* continued to imply power over the wife.

1895.

2. See Q. 213.

4. "The habitual fear of punishment maketh men just, it frames and moulds their wills to justice." Examine Austin's criticism of this proposition of Hobbes

A. Austin says that "owing to the prevalent misconceptions regarding the nature of will, the effect which is really brought upon the state of the desires is frequently ascribed to the *will*." The position is true in this sense that the fear of punishment "tends to quench wishes which urge to breach of duty, or are adverse to that which is *jussum* or ordained."

5. Trace the origin of the modern International Law of capture in war.

A. The modern International law of capture in war, though admitting of the doctrine of occupancy (*i.e*, in time of war the enemy's property is considered as res nullius, and whoever first occupies it will be its owner) admits of certain rules by way of reform, as war now-a-days has assumed a better complexion.

6. What in Bentham's view are the true tests by which

a despotic Government may be distinguished from one that is free ?

A. Bentham has pointed out that the distinction between a despotic and a free Government turns "on the manner in which the whole mass of power which taken together is supreme, is in a free State distributed amongst the several ranks of persons that are sharers in it, on the source from whence their titles to it are successively derived; on the frequent and easy changes of condition between the Governors and the Governed, whereby the interests of one class are more or less indistinguishably blended with those of the other; on the responsibility of the Governors; on the right which the subject has of having the reasons publicly assigned and canvassed of every act of power that is exerted over him." To speak of the supreme authority as limited, or of their acts as illegal is in his opinion a simple abuse of terms.

7. See Q. 198.

8. See Q. 111.

10. Give a short account of the different phases through which accerding to Maine, the primitive criminal law of the Romans passed.

A. Relates to Maine's Ancient Law.

11. (*a*) What are laws properly so called? (*b*) What positive moral rules, are laws in the strict sense? Illustrate your answer to the second question by examples.

A. (*a*) See Q. 21. (*b*) The positive moral rules which are laws in the strict sense are of three kinds, *viz.*,—(1) Set by men living in a state of nature. (2) Set by Sovereigns but not as political superiors *e. g.*, an imperative law set by a sovereign to a sovereign. (3) Set by subjects as private persons; *e g.*, set by parents to children, by masters to servants, by lenders to borrowers, &c.

12 What does Bentham mean by a physical or natural sanction? State Austin's objections to his use of the term?

A A physical or natural sanction is a sanction which is brought on the suffering party by his own action, *e g.*, if your house falls down for want of repairs and causes injury to others, you bring upon yourself a sanction for your negligence

1896

1 (*a*) Give a short general description of the leading features of the Roman Law of Servitudes (*b*) Define Easements and Profits a Prendre, and give instances Distinguish between easements appurtenant and in gross

A (*a*) See Q 233 (*b*) See Q 234

2 See Q 225

3 Explain the nature of the Roman Contract Stipulatio. What was its peculiar excellence according to S H Maine

A It required the promisee to ask a question to the promisor in such way as "Do you agree to do this" and the promisor had to reply, "Yes, I do" It had the excellence of arresting the attention of both the promisor and the promisee, and thus enabled them to reflect whether they should go on or draw back

4 See Q 7

5 (*a*) What is a universal succession? (*b*) The notion of a universal succession is much obscured in the English legal system (*c*) Give the Roman definition of an inheritance

A (*a*) See Q 179 (*b*) See Q. 180 (*c*) *Inheritance* implies succession to the entire or partial estate of a person so far as it is intestate

6. See Q 14

7. See Q 171

8 See Qs. 252 and 253

9. See Q. 342.

10. Enumerate and describe the sources of law.

A See Qs. 65 to 106.

1897.

1 See Q. 42.

2. "A custom exists as law wholly independent of the will of the sovereign authority and rests for its obligatory force upon national will or national conviction." Discuss this statement fixing the moment of time at which customs become law.

A. See Q. 79. Custom owes its origin to chance or conscious choice for some reason or other ; and it ripens into a habit by uniform observance of it for a long time. It is not prescribed by the Sovereign at the time of origin ; and its authority as custom is due to the people. But when custom is recognized by the State it changes into positive law and no longer remains as custom, and its effect is retrospective.

3. Classify jura in re aliena. Give a short sketch of the Roman law of security.

A. See Table XI. App. B. and Q. 228.

4. Explain the terms Usucapion, jus in rem, profits a prendre, Jus gentium, patria potestas.

A. *Usucapion* : was in Roman law a mode of acquiring ownership by possession (bona fide and under color of right) for some time.

Jus in rem—See Qs. 163, 164 and 258.

Profits a prendre – see Q. 234.

Patria potestas—is the power of the father or other head of a family over the children.

5. (*a*) Analyse the signification of the term possession. (*b*) Explain briefly in what sense the derivative possessor is a possessor. (*c*) What are the reasons for which possession

receives protection. (*d*) What place should the doctrine of possession occupy in a Code of Law ?

A (*a*) See Qs. 202 to 206. (*b*) See Q. 214 (*c*) See Q. 209. (*d*) See Q. 211.

6. Shew that our modern conception of testamentary succession is the result of slow development.

A. See Q. 183 and 184.

7. See Q. 136.

8. See Q. 269.

9. See Q. 337 and 342.

10. See Q. 326.

1898.

1. (*a*) State fully the current theory regarding the condition of primitive societies. What was the condition of woman in such societies ?

A. (*a*) It is the Patriarchal theory.—See Q. 3 of 1878. The condition of woman was perpetual tutelage. She had no title to liberation or to become the head of a new family or a new set of parental powers.

2. See Q. 179.

3. What according to S. H. Maine is the early history of proprietory right. State his criticisms on the doctrine of occupancy in regard to the origin of ownership.

A. He thinks that the true origin of private property was by gradual dissolution of the blended rights of a community into the separate rights of individuals. He argues that the occupancy theory is untenable as the facts of history shew that originally there were families and not individuals as units of society ; and he also maintains that the idea that every thing ought to have an owner does not explain the theory.

4. See Q. 37
5. See Q. 110.
6. See Qs. 115 and 127.
7. See Qs. 163 and 164.
8. See Q. 255.
9. See Q. 192.
10. See Q. 219.
11. See Q. 202.

1899.

1. See Q. 345.
2. See Q. 101.
3. (*a*) What control, if any, has the Governor General of India, as such over the different legislature bodies in the country (*b*) Discuss Sir William Markby's views as to the powers of Subordinate legislative bodies.

A. (*a*) The Governor General has the power of granting Sanction or not to any act of Subordinate legislature. (*b*) See Q. 107 a.

4. See Q. 138.
6. What is the relation between sanctions and rights? Give difinitions of both these terms. What is the difference between ultimate and intermediate sanction? What is the tendency of modern legislation as to sanctions?

A. *Sanction* is a *penalty* or evil which is to be incurred in case a *right* be violated. It is prescribed by the Sovereign who is the author of laws creating *rights*, and who enforces laws by means of *sanctions*, and thereby protects the *rights*. *Right* is a privilege created and protected by the law of a country. As to "right" and "a right"—see Qs. 112 to 114. Ultimate and Intermediate Sanction—See Q. 2 of 1876. See Qs. 53, 118 and 119

7. Illustrate the importance of Fictions in the infancy of Law.

A. See Q. 64 and Q. 2 of 1882.

9. See Q 76.

10. What is the difference between (1) easement and profit a pendre, (2) ownership and possession, (3) negligence, heedlessness and rashness, (4) will and intention. Illustrate your answer in each case.

A. (1) See Q. 234. (2) See Q. 220 and Q. 2 of 1875, (3) See Q 139. (4) See Q. 133 and Q. 5 of 1894.

11. What is Blackstone's explanation of error ? Discuss it in connection with the views expressed by Austin and Savigny on the same subject. How is error in criminal cases (1) regarded by the Roman law : (2) treated in the French Code ?

A. Blackstone affirms that ignorance of law is no excuse on the ground that every person *may* know the law, and he is bound to know it. But Austin contends that the position that every person may know the law is unture ; and further, he maintains that to assert that ignorance of law will not excuse because he is bound to know it is only to assign the rule as a reason for itself Austin considers that the only ground why ignorance of law is considered as an excuse is that otherwise the Court would be involed in questions scarcely possible to solve, and the administration of justice would be next to impracticable.

The Roman Law allowed ignorance of law as an excuse in the case of women, soldiers and persons under twenty-five years, in whose case ignorance of law seems to be inevitable on account of sex, profession, and age. But even in these cases, it was no excuse if the *jus gentium* was broken as it is knowable *naturali ratione* The French Code does not allow it as an

excuse; for, the law, it holds, "both can be and ought to be definite and knowable."

12. (*a*) Sketch the early history of the conception of a crime. (*b*) Distinguish between civil injuries and crimes. (*c*) Discuss the statement that the more archaic a code, the fuller and minuter is its penal legislation. Give illustrations in support of your answer.

A. (*a*) See the Criminal Law under Q. 342. (*b*) See Q. 326 (*c*) See Q. 327.

1900.

1. Explain the nature of Responsa Prudentium in early Roman law and compare them with English case law.

A. Responsa Prudentium was in early Roman Law a kind of positive law which was made by its immediate authors (judges or legislators) on opinions and practices of eminent private lawyers. These lawyers influence the judges or legislators by their opinions, and are, like custom, causes of law, but not their authors. The judges or legislators by accepting the opinions make them laws as they do in the case of customs. This law is similar to the English case law; and the only difference lies in the different turns given to the expression.

4. Distinguish Positive Law from Divine Law and Principles of Morality. A. See Q. 61.

5. See Q. 72.

6. Explain the division of positive law into private law and public law. A. See Q. 337.

7. See Q. 114.

8. Explain the following terms (*a*) rights in rem and in personam, (*b*) antecedent and remedial rights.

A. (*a*) See Qs. 163, 164 and 258, (*b*) See Qs. 166 and 167.

9. Explain the distinction between relative and absolute duties. Criticize the term absolute duties. A. See Q. 153.

10. What are servitudes? Give instances of them.

A. See Qs. 231 to 241.

11. Explain the nature of security known in Roman Law as hypothec. A. See (4) of Q. 247.

12. State briefly the evil consequences which followed the passing of the Regulating Act. A. See Cowell's T Lectures

1901.

N. B.—Questions 1 and 2 are omitted as not relating to Jurisprudence.

3 (*a*) What do you understand by the Patriarchal theory of the primaeval condition of the human race? (*b*) Which is older, intestate inheritance or testamentary succession? Give ground for your answer?

A. (*a*) See Q. 3 of 1878. (*b*) Intestate inheritance is older; for, the facts of history shew that in early society, individuals had no right and families were units of society.

4. Summarize the various modes in which ownership may be acquired? A. See Q. 224.

5. What is the meaning of and distinction between representative and derivative possession? A. See Qs., 212 to 214.

6. Define (*a*) Fiducia, Pignus, Hypotheca; (*b*) Usucapion; (*c*) Universitas Juris, (*d*) Jus in rem and in personam, (*e*) Usus: Usufructus.

A. (*a*) See Q. 247. (*b*) See Q. 225. (*c*) See Qs. 179 and 10 of 1892. (*d*) See Qs. 163, 164 and 258 (*e*) *Uses*—is a mere mode of Usufruct *i. e.* the same right with some additional limitations in point of user. *Usufructus*—is a right of completely enjoying the whole subject for life merely under certain restrictions. The entitled party can not cede

his usufruct so as to put the alience in his own place, though he may let it out, reserving a reversion to himself.

7. "Until the State is formed there can be no law in the strict sense of the term." Explain this statement.

A. There can be no law before the formation of a State; for, law is to be set by the Sovereign or political head of a society: and unless there is any society there can be no Sovereign.

8. Why can not ignorance of law be admitted as an excuse?

A. See Q 11 of 1899 and Q. 136.

9. Distinguish between moral and legal rights and duties

A. See Qs. 115 and 116.

10. See Q. 375.

PRELIMINARY B. L.

1908.

1. Define rights *in rem*, and state the principal heads thereof, giving an example of each. A. See Q 192.

2. Define a wagering contract and give instances where such contracts are valid and where they are not.

A A wagering (aleatory) contract is one which depends for its effects as to both profit and loss upon an uncertain event. See q. 290. All contracts or agreements by way of gaming or wagering are null and void—8 and 9 Vict. c. 109 S. 18.

3. State and criticize Savigny's analysis of contract.

A. See Qs. 268-269.

4. State the law of Rome and of England regarding the ransfer of an obligation. A. See Q. 285.

5. What are the five different heads under which wrongful acts are classified, and distinguish torts from crimes.

A. See Qs. 326 and 329.

6. What are the principal causes of the chief varieties of status among natural persons and give illustrations of any four of them. A. See Q. 309.

7. State and briefly explain the antecedent international rights in *rem* and in *personam*. A. See Q. 356.

FINAL.

1. The obligation of law rests everywhere and at all times upon a Sovereign political authority. How have the difficulties of the above theory been dealt with by Maine and Holland. A. See Q. 40.

2. Explain and illustrate the difference between torts and crimes. A. See Q. 326.

3. Explain legal rights noticing the elements from which a right results. See Q. 127.

What do you understand by antecedent right in rem.

See Q. 164 and 166.

What rules are comprised in Private Adjective Law.

A. See Qs. 314 and 316.

4. Explain Belligerency and Neutrality. See Q. 368.

What are the steps by which redress for a violated right may be obtained in a friendly manner. A. See Q 369.

5. Explain and illustrate the distinctions between pledge, pawn, lien and hypotheca as modes of creating a security.

A. See Qs. 245 to 2 6.

N. B.—Questions of Group II are omitted as not relating to this book.

January, 1909.

PRELIMINARY B. L.

1. State the practical conclusions drawn from the doctrine of *Jusnaturale*. A. See Qs. 28.

2. Explain the meaning of Right and distinguish a legal right from all other rights. A. See Qs. 127 and 114.

3. Define and classify rights in rem and give an example of each kind and of their violation. A. See Qs. 164 and 166.

4. Explain and illustrate external sovereignty, Internal sovereignty state, simple state and system of states.

A. See Qs. 29 and 31.

5. Explain and illustrate Adjective Law, Substantive Law, Normal person, Abnormal person and servitude.

A. See Qs. 127,231 and 233.

6. What are the two kinds of possession in Roman Law, give examples thereof? What are Savigny's: and Therings views on the Roman Law of possession. What are the Teutonic and English theories on the subject.

A. See Qs. 203 to 206.

7. How is the right of original acquisition acquired with or without an act of possession. See Qs. 224.

8. What is the difference between a tort and a crime?

A. See Qs. 326 and 329.

How are remedial rights extinguished. See Qs. 335.

6. The movement of progressive societies has hitherto been a movement from status to contract Develop. Explain clearly the meaning of status and of contract.

A. See Q. 2 of 1891.

7. What do you understand by the subjective and the objective theories of contract. Which do you accept and why?

A. See. Qs. 269 and 270. Savigny's theory by which

union of wills is necessary in a contract is the older or *subjective* theory, while the theory which does not require it is the *newer* and *objective* theory.

8. Write a note on the history of testamentary succession

A. See qs. 183 and 184.

9. Analyse "possession" and explain the relation between possession and property. Define ownership.

A. See Qs. 219 and 220.

10. Sketch the history of *debit* and *crime* and explain the difference between the two. How would you classify torts

A. See Qs. 326 and 329.

11. "International Law is the vanishing point of Jurisprudence." Develop. A. See Q. 345.

12. Examine the theories regarding the proper forum for the punishment of an offence. A. See Qs. 391.

(1). Suppose an Afghani murders a Chinaman in Calcutta Where and by which law do you think he should be tried

A. In Calcutta, by the laws of British India

1910 (*b*).

First Paper.

1. Indicate the part played by one of the following agencies in the development of law. (*a*) Custom and (*b*) Equity. A. See Qs. 70 and 94.

2. Explain the term "Right" and its ambiguities. What is the relation of law to rights. A. See Qs. 112 and 114.

3. The essential elements of an "Act" are three-namely an exertion of the will, an accompanying state of consciousness, a manifestation of the will." Discuss this proposition. Is the test applicable to all "Acts." A. See Q. 133.

Or

Analyse and explain the constituent elements of a contract discuss the claims of the so called objective theory of contract.

A. See Qs. 268 to 271.

4. Distinguish Private from Public Law. Examine the place of Criminal Law in the scheme of classification.

A. See Qs 337 and 326.

Or

. Explain "The law of nations is but private law writ large." It has been said that international law is the vanishing point of Jurisprudence. Can you justify this statement.

A. See Qs. 344 and 345.

5 Analyse clearly the notion of Ownership. Explain the nature of the special protection which the law gives to possession, giving reasons for the same.

A. See Qs. 219, 220, 209 and 205.

SECOND HALF.

6. Explain the difference between Tort and crime. Illustrate your answer by special reference to defamation

A. See Qs. 326 and 330.

Or,

What do you understand by Negligence? Can you indicate any standard for measuring Negligence? Give illustrations.

A. There are two degrees of Negligence :—

(1) Want of care and skill, which are due from persons generally. (2) Want of such care and skill as are due from the specialists.

7. Write short notes on the following ;—(*a*) Positive law,

(*b*) Respondent superior, (*c*) Rights of Neutrals, and (*d*) Artificial persons. A. See Qs. 32, 375 and 129.

8. Trace the development of law, indicating the agencies which bring it into harmony with society. A. See Qs. 66 and 64.

9. It has been said that the Jus Naturale of the Greeks is simply the Jus Gentium of the Romans seen in the light of a peculiar theory. Discuss this proposition. A. See Q. 60.

Discuss the following :—The movement of the progressive societies has hitherto been a movement from status to contract." A. See Q. 2 of 1891.

10. Briefly describe the gradual development of the idea of wrongs from the earliest times A. See Q. 326.

Or,

Trace the gradual changes through which the modern conception of contract has emerged out of the ceremonial contracts of ancient times. A. See Q. 269.

1911 (*a*).

FIRST HALF.

1. Jurisprudence is "the formal science of positive law." Explain. Analyse the concepts involved in the different terms used in the above definition. A. See Qs. 8 and 32.

2. What is the Law of Nature. Sketch the history of the doctrine relating to this law, and briefly indicate some of the practical conclusions deduced from it. A. See Q. 28.

3 Discuss the doctriue of sovereignty? How, if at all, will you apply it to Hindu Law. A. See Qs. 32 to 42.

4. Examine the relation between law and custom—when, in your opinion does custom become law. A. See Q. 70.

5. What is equity? Trace briefly the growth of equity Jurisdiction in England and compare English and Roman Equity. A. See Qs. 94 and 95.

6. Define and analyse Right. Classify and illustrate the different kinds of legal right.

A. See Qs. 127, 128, 146 and 147.

SECOND HALF.

7. Write a historical note on testamentary succession and briefly compare ancient and modern ideas respecting will.

A. See Qs. 183 and 184.

8. In its lowest form it is a right of possession, in its highest form a right of ownership." Analyse and explain both conceptions fully. A. See Qs. 219 and 220.

9. Examine the objective theory of contract. Indicate the place of contract in early law. What do you understand by quasi—contract. A. See Qs. 7 of 1909.

10. How may wrongs be classified? Which classification do you adopt and why? A. See Qs. 326 and 329.

11. Write a note on Legal Fictions, and illustrate the part they play in English Case law. A. See Qs. 2 of 1882.

12. Sketch the history of criminal law. Discus the current theories of Criminal Jurisdiction.

A. See Qs. 342 and 391.

1911 (*b*).

1. "Jurisprudence is the formal science of positive law." Explain and discuss. A. See Qs. 8 and 32.

2. What are the instrumentalities by which law is brought into harmony with society. Indicate the nature of the operation of each. A. See Qs. 64, 94, 102 and q. 2 of 1882.

3. Write short historical note on the Law of Nature.

A. See Q. 28.

4. How would you analyse a right. Explain and illustrate rights at rest and in motion, rights in rem and personam, rights antecedent and remedial.

A. See Qs. 127, 146 and 170.

5. "The family as held together by the Patria Potestas is the nidus out of which the entire law of Persons has germinated." Develop.

A. The law of persons has grown out of the law governing families in ancient times. As law recognizes now individuals so it did families before (the law of individuals or persons has gradually grown up) as units of society.

SECOND HALF.

6. "The movement of progressive societies has hitherto been a movement from status to such contract." Explain and examine. Specify the constituent elements of contract.

A. See Q. 2 of 1891, and Q. 271.

7. For purposes of Roman Testatmentary Jurisprudence each individual citizen was a corporation sole. Explain.. Institute a brief comparison between ancient and modern ideas respecting wills and successions.

A. See Qs. 183 and 184.

8. All property is founded on adverse possession ripened by prescription. Examine. Analyse the concept of possession.

A. The law is that adverse possession ripens into legal right when the real owner is barred from recovering his rights by the lapse of the period as fixed by the law of Prescription. Hence the above is a correct proposition. But when the real owner parts with his rights for consideration, for a legal purpose and of his free will, the purchaser acquires rights without waiting for the period of prescription.

9. "The penal law of ancient communities is not the law of crimes; it is the law of wrongs or torts." Develop. Explain clearly the distinction between crimes and torts.

A. See Q. 326.

10. "The law of nations is but private law writ large." Develop.

A. See Q. 349.

1912 (*a*).

1. Define "Jurisprudence." Mention some improper uses of the term. A. See Qs. 1 and 5.

Is the science of Jurisprudence divisible into several species. A. See Qs. 9 to 11.

2. Explain the different senses in which the term *law* has been used. How would you define it.

A. See Qs. 19, 19B. and 32.

3. Indicate the relations subsisting between (*a*) Principles of morality and positive law ; (*b*) custom and law.

A. See Qs. 59, 70 and 72.

4. Discuss the theory of sovereignty. Do you support it ? If so on what grounds ? A See Qs. 37 and 38.

5. Analyse "right." Explain and illustrate the distinction—between "natural" and "artificial" persons.

A. See Qs. 127 and 129.

6. What is a Juristic act ? Enumerate its essentials and specify its characteristics. A. See Q. 141.

7. Discriminate carefully between a crime and a wrong.

A. See Q. 326.

Second Half.

1. The Law of Nature is simply the Law of Nations seen in the light of a peculiar theory. Develop.

A. See Q. 60.

2. Briefly discuss the nature of the various agencies by which Law is brought into harmony with society.

A. See Q. 64.

3. Write a short note on the Patriarchal theory.

A. See Q. 3 of 1878.

4. Sketch the early history of testamentary succession.

A. See Q. 183.

5. Define "status." What do you understand by the historical difficulty of Primogeniture.

A. See Q. 2 of 1891.

The right of the eldest son to inherit the father's estate was not recognized in ancient times when properties were held by families and not by individuals. Hence arises the difficulty of considering Primogeniture as historically of ancient origin.

6. Analyse the legal concepts of possession and property.

A. See Qs. 219 and 220.

7. "The penal law of ancient communities is not the law of crimes; it is the law of wrongs." Develop.

A. See Qs. 326 and 327.

1912 (b).

First Paper.

1. Analyse the notion of Positive Law, briefly explaining its constituent elements. A. See Q. 32.

2. Define rights *in rem* and rights *in personam*. Briefly indicate with the help of illustrations, the different heads under which the rights in rem have been classified.

A. See Qs. 164, 190 and 192.

Or,

Explain the essential elements of a contract. State and criticize Savigny's analysis of a contract.

A. See Q. 269.

3. Define ownership. Explain and illustrate any four of the different methods of acquiring ownership.

A. See Qs. 220 and 224.

Or,

Is International Law entitled to be called Law. How does it differ from Positive Law? A. See Qs. 344 and 345.

4. What do you mean by "Sources of law." Illustrate your answer by special reference to one of the following:—(*a*) Religion; (*b*) Legislation. A. See Qs. 81 and 102.

5. Write short notes on the following:—(*a*) Respondent superior, (*b*) Corporation sole, (*c*) Sanction and (*d*) Remedial rights. A. See Qs. 308, 53 and 322.

SECOND HALF.

6. Describe briefly the origin of Jus Gentium and Jus Naturale. A. See Q. 60.

Or,

Briefly describe the influence exercised on Modern history by the theory of the Law of Nature. A. See Q. 63.

7. Illustrate the part played by legal fiction in the development of law. A. See Q. 2 of 1882.

Or,

Sketch the history of testamentary succession.

A. See Q. 183.

8. Sketch the early history of delicts and crimes.

A. See Qs. 326 and 327.

N.B. Qs. 9 and 10 are omitted as not relating to this book.

1913 (*a*).

First Paper.

1. Define "Jurisprudence." Examine the validity of the distinctions made between (*a*) Particular and universal Jurisprudence; (*b*) Historical and Philosophical Jurisprudence.

A. See Qs. 1, 8, 9 and 10.

2. What is the Austinian conception of law? How far are you prepared to accept it? Give reasons for your answer.

A. See Q. 54.

3. (*a*) a right *in rem* and a right in personam. (*b*) an *antecedent* right and a *remedial* right.

Give one illustiation of each. A. See Qs. 164 and 166.

4. Analyse the legal concept of possession and indicate how it is related to that of ownership.

A. See Qs. 219 and 220.

5. Explain and examine the objective theory of contract.

A. See Qs. 269 and 270.

6. How would you classify torts? Distinguish torts from crimes. A See Q. 326.

7. "International law is the vanishing point of Juris prudence." Develop. A. See Q. 345.

What is the objection to the term "private international law." A. See Q. 389.

SECOND HALF.

N. B. Questions 1 to 3 are omitted as not relating to this book.

4. What do you understand by "legal fictions?" Illustrate your meaning by two concrete examples: —

A. See Q. 2 of 1882.

5. Write a brief note on the Law of Nature.

A. See Q. 28.

6. The movement in progressive societies has been from status to contract. Develop. A. See Q. 2 of 1891.

7 Sketch the history of the law of testaments amongst the Romans and the Hindus. A. See Qs. 183 and 184.

1913 (*b*).

First Paper.

1. What do you understand by the "Sources of Law."

A. See Qs. 65 and 66.

What is Custom? At what moment does it become Law. Ought any high functionary in the state to be allowed to disregard Existing law and introduce a more perfect body of rules discoverable in his Judicial conscience. What weight would you attach to the *obiter dicta* of Judges.

A. See Qs. 70, 72, 87 and 91.

2. A moral and a legal right are so far from being identical that they may easily be opposed to one another. How? What is meant by the terms the person of inherence and the person of incidence? Classify Persons. Discuss the relation of will and consciousness to an Act.

A. See Qs. 115, 127, 129 and 133.

Or,

How would you classify Rights. What is the value of the radical division of rights. Why does Austin reject this division. What is the distinction between normal and abnormal rights? Where would you draw the line.

A. See Qs. 146, 148, 150 and 152.

3. Analyse the notion of possession. Discuss the theories of Savigny and Vonjhering in this connection. What is the theory of English Law on this point? Can you lawfully prevent any person from flying in an aeroplane over your land.

A. See Qs. 201 to 206.

4. Discuss the different theories of contract. What is the objective theory of contract? Do you accept it? How far can a contract be regarded as the taking of a risk.

A. See Qs. 262 to 296.

Or,

What is meant by antecedent international rights in rem? Classify them. What are the rights and duties of Neutrals.

A. See Qs. 356, 357, 359 and 375.

5. Discuss the question of a competent forum with regard to Public Law. See Qs. 377 to 381.

SECOND HALF.

1. What do you understand by a 'law of Nature.' Discuss the progress of the idea in France and its importance in modern International Law. A. See Q. 28.

2. Explain some of the important differences between ancient and modern ideas on the subject of wills and successions. A. See Qs. 182 to 188.

3. Criticize the aphorism of Savigny that all property is founded on adverse possession ripened by prescription.

A. See Q. 8 of 1911 (Second Half).

Or,

Explain "consensual contracts." Why were they called contracts Juris Gentium? How were they related to Jus Naturale? A. See Q. 269.

4. What is Allegiance? What are the different kinds of allegiance? What is meant by the term a natural-born subject. A. See q. 5 of 1874.

N. B. Question 5 is omitted as not relating to this book.

1914 *(a)*.

FIRST HALF.

1. Define Jurisprudence? Is it divisible into *(a)* general and particular and *(b)* historical and philosophical.

A. See Qs. 1, 9, 10, and 12.

2. Enumerate and briefly describe the sources of law?

A. See Qs. 65 and 66.

3. "Law in something more than police." Explain. Indicate the purposes and objects of law.

A. See Qs. 109 (para. 3), 110 and 111.

4. How would you classify rights? Distinguish between a right at rest and a right in motion. A. See Qs. 146 and 170.

5. Examine the objective theory of contract.

A. See s. 269.

6. Analyse the idea of possession. How is possession related to property or ownership. A. See Qs. 201 to 206.

7. "International law is the vanishing point of Juris prudence." Develop, A. See Q. 345.

SECOND HALF.

1. What do you understand by a legal fiction? Illustrate.

A. See Q. 2 of 1882.

2. Discuss briefly the theory of social contract.

A. See Q. 260

3. Sketch the history of equity. See Q. 94

N. B Qs. 4 to 7 are omitted as not relating to this book

APPENDIX B.

TABLE I.—(*See Q. 13*).

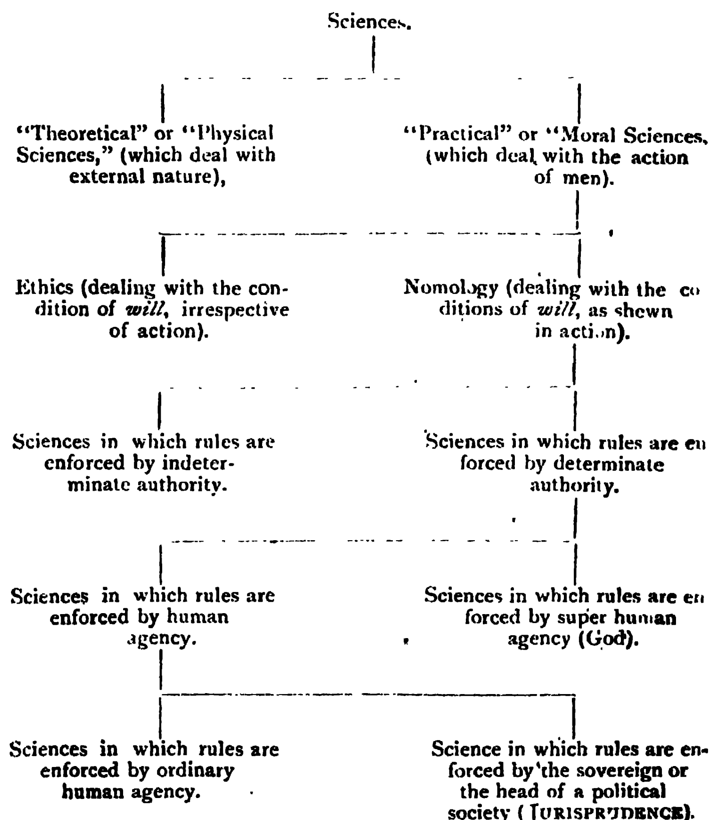


TABLE II.—(*See Q. 14*).

BENTHAM'S DIVISION OF JURISPRUDENCE.

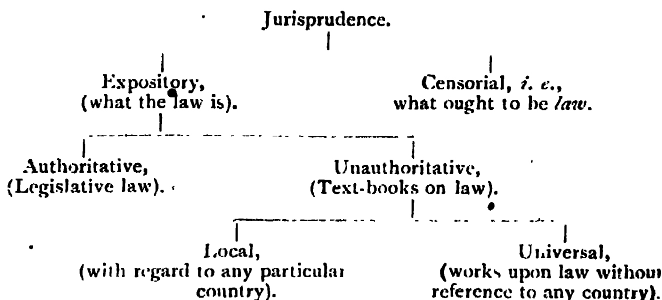


TABLE III.—(*See Q. 22*).

HOLLAND'S DIVISION OF LAWS.

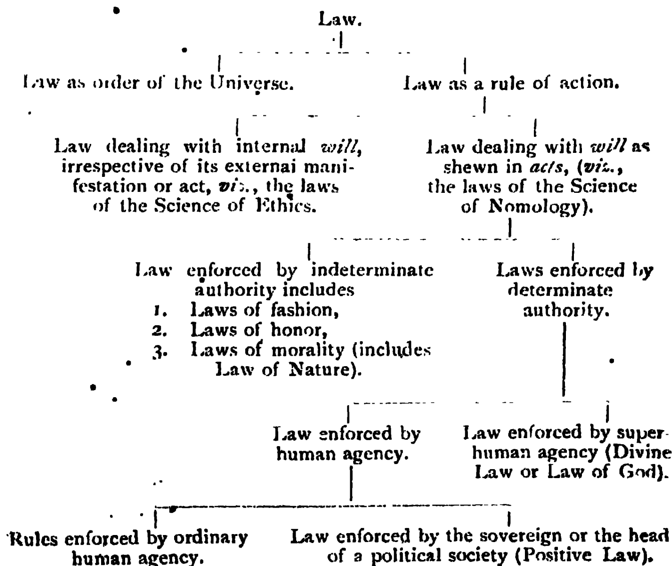


TABLE IV.—(*See Q. 22*).

AUSTIN'S DIVISIONS OF LAW IN ITS LITERAL SENSE.

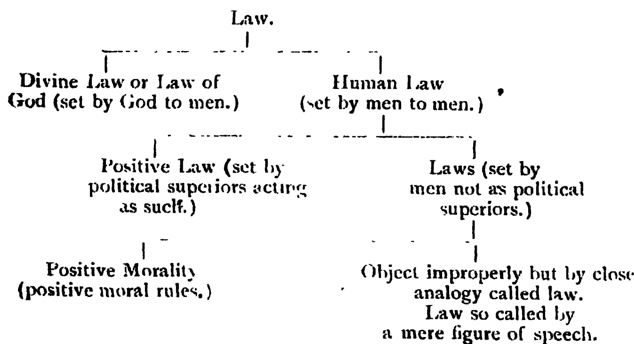


TABLE V.—(*See Q. 150*).

LAW OF THINGS.

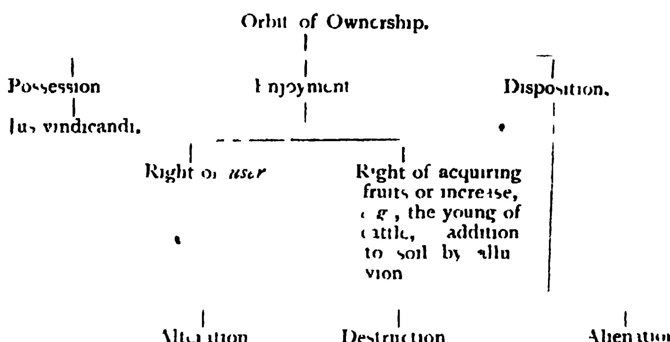
Law of Persons.	Shipping.	Banking.	Torts.	Family.	Succession	&c.
Normal ...						
Lunatic ...						
Alien ...						
Covert ...						
Infant ...						
&c. ...						

N. B.—The *shorter* line represents the Law of persons, and the *larger* one the Law of Things. The horizontal and vertical lines express the variations of *persons*, and *things* respectively.

TABLE VI.—(See Q. 130)

Law.
- Municipal
  - Private.
    - Substantive.
      - Normal rights.
        - Antecedent rights.
          - Rights "in rem."
          - Rights in personam.
        - Remedial rights.
      - Abnormal rights.
    - Adjective.
  - Public.
- International.

TABLE VII.—(*See Q.* 220).



Objects of Ownership are—(1) tangible objects; (2) intangible property including (*a*) patent, (*b*) trade mark, (*c*) copyright, and (*d*) franchise; and (3) Universitas Bonorum. **Modes of acquisition** of Ownership are—(1) Original, *i.e.*, (*a*) with an act of possession, *viz.*, occupatio, specificatio, fructuum perceptio and lawful possession and (*b*) without an act of possession; *viz.*, accessio, confusio, (ii) Derivative including (1) inter vivos, *e.g.*, gift, conveyance, and (2) upon death, *e.g.*, succession intestate, or under will. The **Modes** of Ownership are—(1) Legal and (2) Equitable.

TABLE VIII.—(*See Q.* 297.)

VARIATIONS OF JURISTIC PERSON.

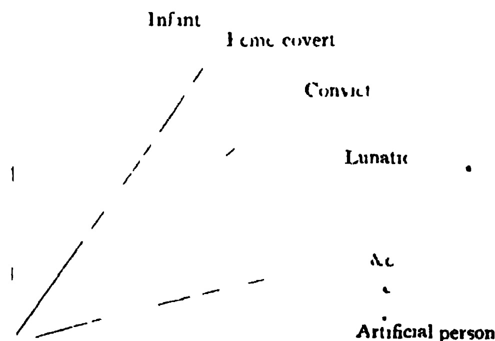


TABLE IX.—(*See Q. 8 of 1873 of the C. U.*)

Royal Prerogatives.

Direct. | Indirect.

Direct → Royal character.

Indirect → Royal authority. | Royal income.

Royal character.

1. The attribute of Sovereignty or pre-eminence, from which arise the maxims:
   (*a*) There can be no corruption of blood in the sovereign.
   (*b*) The sovereign cannot be a minor in judgment of law.
   (*c*) The King never dies (though one King dies his heir becomes again King).
2. Irresponsibility—the King can do no wrong (*i. e.*, must not be imputed to him personally) from which arise the maxims
   (*a*) no suit or action can be brought against the sovereign;—which is also clear on the ground that no court can have jurisdiction over him as all jurisdiction implies superiority of power and proceeds from him. Remedy in case of wrong is however by Petition of Right.
   (*b*) *Nullum tempus occurrit regi, i. e.*, there can be no negligence or laches in the King. Hence, a person can be tried for a criminal offence at any time, and the right to do it is not barred by lapse of time.

Royal authority.

1. The Sovereign has the sole power of sending ambassadors to foreign States and receiving ambassadors.
2. Right to make treaties, leagues and alliances with foreign States and princes.
3. Right of making war and peace.
4. Power of directing the issue of letters of *marque and reprisal* upon demand by the subjects.
5. Power of granting safe conducts.
6. Power of rejecting provisions of Parliament which seem to him improper.
7. Being first in military command within the Kingdom.
8. Fountain (distributor) of justice and general conservator of the peace of the kingdom.
9. Guardian of disabled persons; *viz.*, infants, idiots and lunatic.
10. Fountain (parent) of honor, office and privilege.
11. Arbiter of commerce.
12. Head and supreme governor of the national church.

N.B.—Prerogative:—(from *præ* and *rago*—something required or demanded before or in preference to others) implies "the character and power which the Sovereign hath over and above all other persons in right of his royal dignity, and which though part of the common law of the country is out of its ordinary course."

TABLE X.—(*See Q. 5 of 1885 of the C. C.*)

RIGHTS AS OPPOSED TO WRONGS (BLACKSTONE).

Rights.

Personal

1. Personal Security.
2. Personal Liberty.
3. Security from corporal insult.
4. Preservation from health.
5. Security of good name and reputation.

Of property

Real

Lands | Tenements | Hereditaments

Personal moveables and rights connected there with

In private Relations

1. Master and servant
2. Husband and wife
3. Parent and child
4. Guardian and ward

Public.

Sovereign (in relation to people) | Royal Prerogative | Royal Title | Royal Revenue | Royal Family | The Parliament | Royal Forces, &c.

TABLE XI.—(*See Q. 228*).

- Jura in re aliena.
  - Servitude.
    - Real, Prædial or appurtenant.
      - Profits a prendre.
      - Easement.
    - Personal or in gross.
      - Use.
      - Usu-fruct.
      - Quasi-Usufruct.
  - Pledge.
    - Mortgage.
    - Pawn.
    - Lien.
    - Hypothec
      - Tacit.
      - Conventional.
      - Judicial.

TABLE XII.—(*See Q. 394*).

- Interpretation
  - Legal (resting on the same authority as law).
    - Authentic (expressly provided by legislator).
    - Usual (derived from unwritten practice).
  - Doctrinal (resting upon intrinsic reasonableness).
    - Grammatical (turning on the meanings of words and sentences).
    - Logical (depending on the intention of the legislator).
      - Extensive (obvious sense).
      - Restrictive (restricted sense).

TABLE XIII.

Antecedent Rights in rem

- Connected with the personality of the individual
  - 1. Personal safety and freedom
    1. Menace.
    2. Assault
    3. Wounding
    4. Imprisonment
    5. Dangerous things
    6. Dangerous places.
  - 2. Society and control of one's family and dependants
    1. Marital
    2. Parental.
    3. Tutelary
    4. Dominical
    5. Some contractual rights similar to dominical and tutelary rights; e.g., servant should not be enticed away
  - Reputation
    1. Libel
    2. Slander
- Connected with the advantages derived from the world
  1. Advantages open to the community generally include,
     (a) Unmolested pursuit of occupation or means of livelihood
     (b) Unobstructed use of public highways and navigable rivers
     (c) Freedom from abuse of legal process.
  2. Possession and Ownership
  3. Immunity from damage by fraud